

THE BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 1999/2000 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Prior 1996/1997 Sunset Review, Background Paper for the 1999 Public Hearing, Board's Response to Issues and Recommendations from 1999/2000 Sunset Review, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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PART 1.

Board for Professional Engineers and Land Surveyors

BACKGROUND INFORMATION AND FOUR YEAR OVERVIEW OF THE CURRENT REGULATORY PROGRAM

BACKGROUND AND DESCRIPTION OF THE BOARD AND THE REGULATED PROFESSION

History of the Board and Regulation of Engineers and Land Surveyors

The California Legislature created the Board of Registration for Civil Engineers in 1929, following the failure of the Saint Francis Dam in northern Los Angeles County which killed 450 people. The Legislature determined that the unregulated design of construction projects constituted a hazard to the public and thus required the licensing (registration) of civil engineers. The Board's jurisdiction over the licensing of land surveyors was enacted in 1933, when the State Surveyor General's office was abolished. The Board is now officially known as the "Board of Registration for Professional Engineers and Land Surveyors." As of January 1, 1999, the name of the Board will change to the "Board for Professional Engineers and Land Surveyors."

The Professional Engineers Act (PE Act) has had some major changes over the years since the Board's creation. The number of branches of engineering which the Board regulates has increased, and the status of some of the older branches has changed. For instance, when electrical and mechanical engineering were first covered by the registration law in 1947, the law only affected the use of "titles" of those branches (only those registered as electrical or mechanical engineers could call themselves electrical or mechanical engineers, but anyone could work in those areas). In 1967, the statutes were amended to regulate the "practice" of mechanical and electrical engineering, thus making them "practice acts," which means that a person who isn't registered as an electrical or mechanical engineer cannot practice in those areas, unless he or she is working for an exempted employer.

Not all engineers who practice in California have to be licensed. There are a number of licensing exemptions for engineers who are employees of licensed engineers or who work for industrial corporations, public utilities or the federal government. In last year's legislative session (Chapter 705, Statutes of 1997), the industrial exemption was broadened to include temporary employees, contract employees, and those hired through third-party contracts. Of the approximately 2.2 million practicing engineers in the United States, only about 18% are required to be, or choose to be, licensed. Some licensing specialties have higher registration rates, such as civil engineers with 44%, while others are lower, such as chemical engineers with only 8% being licensed.

The statutes were amended in 1968 and further amended in 1971, to delegate to the Board the right to regulate the titles of additional branches of engineering. Between 1972 and 1975, the Board expanded the registration program by adding nine title branches of engineering. In 1986, the Board requested a statutory change eliminating its authority to create new categories.

Currently, professional engineers are registered through three (3) "Practice Act" categories of civil, electrical, and mechanical engineering, and through thirteen (13) "Title Act" categories of agricultural, chemical, control system, corrosion, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, and traffic engineering. As of January 1, 1999, three "title acts" will be eliminated. They include: "corrosion," "quality," and "safety" engineer.

There are also two specialized "Title Authorities" for those already registered as a civil engineer: structural and geotechnical (soils) engineer. In addition to the engineering branch titles already listed, titles also restricted to registered engineers are "consulting engineer," "professional engineer," and "registered engineer." As of January 1, 1999, "licensed engineer" will also be added to the list of restricted titles.

There is only one category of licensure for land surveyors. They are regulated under the Professional Land Surveyors Act (PLS Act). Restricted titles for land surveyors are "licensed land surveyor," "professional land surveyor," "land surveyor," or any combination thereof.

Certification, and the right to use the titles, is also provided to those designated as an "Engineer-In-Training" (EIT) or a "Land-Surveyor-In-Training" (LSIT). An EIT or LSIT will be certified after completing the qualifying experience and passing the required exam. The examinations, which test a person's knowledge of the fundamentals of engineering and surveying, are usually taken and passed prior to applying for registration as a professional engineer or land surveyor.

Board Composition

The Board is presently composed of 13 members: 7 public members, 5 licensed engineers, and 1 licensed land surveyor. Eleven members of the Board are appointed by the Governor, while one public member is appointed by the Assembly Speaker and one appointed by the Senate Rules Committee.

Licensing Data

As of August 2, 1998, the Board directly licenses and/or regulates over 127,400 professional engineers and land surveyors. This figure does not include EIT/LSIT certificates, but does include 27,442 cancelled, 8,159 delinquent, 1,880 "retired," 54 revoked, 11 surrendered and 2 suspended licenses. Table 1 on the next page provides a breakdown of licensing data for all Board-registered engineers over the past four years.

Table 1 - Licensing Data

LICENSING DATA		FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Registered Licensees (Type)*		Total: 90,015	Total: 89,995	Total: 91,045	Total: 90,205
Title Acts	Civil	39,642	40,799	41,510	41,869
	Geotechnical	1,106	1,147	1,259	1,168
	Structural	3,017	3,070	3,029	3,101
	Electrical	7,969	8,106	8,351	8,324
	Mechanical	15,793	15,048	15,249	15,373
	Land Surveyor	3,780	3,776	3,704	3,809
	Agricultural	352	354	341	309
	Chemical	2,220	2,275	2,306	2,116
	Control System	2,963	2,931	2,902	2,686
	Corrosion	623	631	632	516
	Fire Protection	920	944	957	868
	Industrial	1,175	1,176	1,179	1,174
	Manufacturing	2,126	1,942	1,915	1,825
	Metallurgical	694	574	581	577
	Nuclear	1,348	1,302	1,283	1,081
	Petroleum	616	533	534	543
	Quality	2,682	2,455	2,407	2,221
	Safety	1,647	1,557	1,526	1,298
	Traffic	1,342	1,335	1,380	1,347
**Applications For Exams		Total: 17,117	Total: 15,100	Total: 14,360	Total: 12,246
Professional Engineer		8,750	7,434	7,744	5,786
Land Surveyor		571	691	557	530
Structural		361	371	384	343
Geotechnical		85	103	77	96
EIT/LSIT		7,350	6,501	5,598	5,491
***Licenses Issued (Type)		Total: 6,748	Total: 5,434	Total: 5,945	Total: 4,907
Civil		1,857	1,422	1,807	1,292
Geotechnical		32	42	30	32
Structural		110	56	80	106
Electrical		425	211	294	281
Mechanical		458	461	295	456
Land Surveyor		116	60	106	124
Agricultural		2	2	3	2
Chemical		93	75	40	63
Control Systems		12	18	10	14
<i>Corrosion (eliminated 1/1/99)</i>		7	6	7	3
Fire Protection		29	26	23	19
Industrial		5	8	1	5
Manufacturing		4	2	1	1
Metallurgical		0	5	1	7
Nuclear		3	0	3	0
Petroleum		3	1	4	13
<i>Quality (eliminated 1/1/99)</i>		3	2	3	2
<i>Safety (eliminated 1/1/99)</i>		0	7	5	4
Traffic		73	27	58	46
EIT Certificate		3,390	2,868	2,296	2,331
LSIT Certificate		126	135	176	97
Renewals Issued		Total: 19,334	Total: 24,875	Total: 24,273	Total: 21,974

* Numbers from Teale Status Code Report, July 1st statistics for respective years.

** Numbers from actual cashiering statistics.

*** Numbers from manual license-issued log.

BUDGET AND STAFF

Table 2 - Fee Schedule

Fee Schedule	Current Fee	Statutory Limit
Application/Exam Fee		
Professional	\$175	\$175
In-Training	\$60	\$60
Renewal Fee (Every 4 years)	\$160	not more than application fee
Delinquency Fees	\$80	not more than 50% of renewal fee in effect on date of reinstatement
Exam Appeal Fee	\$135	\$135 - set by regulation, not statute
Duplicate Certificate Fee	\$10	\$10 - set by regulation, not statute

Table 3 - Revenues and Expenditures *

REVENUES	ACTUAL				PROJECTED	
	FY 94-95	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00
App Exam/License Fees	2,174,875	1,973,664	1,788,557	1,599,921	1,412,847	1,336,080
Renewal Fees	3,166,095	3,606,133	3,457,335	4,215,429	3,354,640	3,354,720
Delinquency Fees	56,510	62,410	55,845	53,468	54,657	54,062
Duplicate License/Cert	3,500	3,720	3,510	4,960	3,920	4,028
Fines (Citations)	-	-	500	350	-	-
Other Misc. Income	21,267	22,237	18,559	11,629	10,346	10,346
Interest	217,818	202,813	210,459	225,270	174,886	188,951
Legal Fees: Reimbursement	-	-	936,974	-	2,944,252	882,909
TOTAL REVENUE	5,640,065	5,870,977	6,471,739	6,111,027	7,955,548	5,831,096
TOTAL REIMBURSEMENTS	21,696	39,453	53,453	34,335	-	-
TOTAL RECEIPTS	\$ 5,661,761	\$ 5,910,430	\$ 6,525,192	\$ 6,145,362	\$ 7,955,548	\$ 5,831,096

* Figures based upon Calstars Month 13 reports.

EXPENDITURES	FY 94-95	FY 95-96	FY 96-97	FY 97-98	PROJECTED	
					FY 98-99	FY 98-99
Personnel Services	1,944,692	2,308,690	2,226,095	2,302,850	2,226,481	2,263,698
Operating Expenses	3,746,120	3,732,195	4,202,648	4,053,375	5,471,837	4,526,298
TOTAL OE & E AND PS	5,690,812	6,040,885	6,428,743	6,356,225	7,698,318	6,789,996
(-) Reimbursements	<21,696>	<39,543>	<53,453>	<34,335>	-	-
(-) Distributed Costs:						
Central Admin ProRata	<187,630>	<176,700>	<133,279>	<67,901>	<131,824>	<170,582>
DCA ProRata	<674,503>	<675,939>	<713,122>	<685,072>	<859,810>	<902,921>
TOTALS	4,806,983	5,148,703	5,528,889	5,568,917	6,706,684	5,716,493

Table 4 - Expenditures by Program Component

EXPENDITURES BY PROGRAM COMPONENT	FY 94-95	FY 95-96	FY 96-97	FY 97-98**	Average % Spent by Program
Examinations	2,560,865	3,400,428	3,535,808	3,877,296	52%
Enforcement	2,674,682	1,871,782	2,442,923	2,097,555	39%
Licensing	455,265	768,675	450,012	381,374	9%
TOTALS	5,690,812	6,040,885	6,428,743	6,356,225	

Table 5 - Analysis of Fund Condition

ANALYSIS OF FUND CONDITION	Actual		FY 98-99 (Budget Yr)	FY 99-00 (Projected)	FY 00-01 (Projected)	FY 01-02 (Projected)
	FY 96-97	FY 97-98				
Beginning Reserve, July 1	2,816,176	3,100,673	3,122,969	3,370,199	2,401,299	905,584
Prior Year Adjustments	188,827	239,529				
Total Adjusted Reserves	3,005,003	3,340,202	3,122,969	3,370,199	2,401,299	905,584
Revenue						
License Fees*	5,324,305	5,885,757	4,836,410	4,759,236	4,902,013	6,000,000
Reimbursements	53,454	34,335				
Interest**	210,459	225,270	174,886	188,951	134,473	50,713
Legal Fee Reimbursement	936,974		2,944,252	882,909		
AB 969, Chap. 59, 1997			(10,000)	(10,000)	(10,000)	(10,000)
Total Rev. & Transfers	6,525,192	6,145,362	7,945,548	5,821,096	5,026,486	6,040,713
Total Resources	9,530,195	9,485,564	11,068,517	9,191,295	7,427,785	6,946,297
Expenditures						
Budget Expenditure***	6,428,743	6,356,225	6,918,000	6,461,000	6,461,000	6,461,000
Y2K (Year 2000 Upgrades)		754	560,818	53,937	1,106	
Integrated Consumer Protection System			125,000	219,000		
SB 492 (Internet Info.)			84,000	42,059	46,095	
Personal Responsibility Act			10,500	14,000	14,000	14,000
Board of Control Claim		5,616				
Late Chg. - State Controller	779					
Total Expenditures	6,429,522	6,362,595	7,698,318	6,789,996	6,522,201	6,475,000
Reserve, June 30	3,100,673	3,122,969	3,370,199	2,401,299	905,584	471,297
MONTHS IN RESERVE	5.8	4.9	5.3	4.2	1.7	0.9

* Fluctuations occur because renewals are on four-year cycle.

** Interest earned at 5.60%

*** Budget Increase by 0%

LICENSURE REQUIREMENTS

Education, Experience and Examination Requirements

To become licensed as an engineer or land surveyor in California, a candidate must typically complete two written examinations; an engineer-in-training or land surveyor-in-training (EIT or LSIT) examination and another as it pertains to their specialty. The candidate must also provide evidence of at least six years of education and/or work experience. (All other states require at least eight years of combined experience.) However, not all licensees have been required to take an examination. With the adoption of each title act, practice act, and practice authority, registrants were grandfathered. Almost three-quarters of the current registrants in some disciplines were grandfathered.

Exams administered to engineers and land surveyors are either provided by the National Council of Examiners for Engineering and Surveying (NCEES) or developed by the Board. The Board develops land surveyor, traffic, geotechnical, structural and special civil examinations. As of January 1, 1999, the Board will administer examinations for the 18 disciplines in which the Board offers licensing, registration, or certification. (Note: As of January 1, 1999, three examinations were eliminated: safety, corrosion, and quality.)

The Board defines qualifying engineering work experience as “that experience satisfactory to the Board which has been gained while performing engineering tasks under the direction of a person legally qualified to practice in the applicant's branch of engineering.” The experience requirements for a land surveyor must be gained under the “immediate direction and supervision” of a person qualified to practice land surveying.

The applicant must submit with the application for licensure a summary of all work experience, along with satisfactory references by those who employed the candidate (called the “Engagement Record and Reference Form”). All applicants must submit completed reference forms from at least four persons legally authorized to work in their specific discipline and who have personal knowledge of the applicant's qualifying experience.

There are some restrictions on the use of qualifying experience, including: (1) a candidate cannot count work performed prior to obtaining his or her engineering degree as qualifying experience, (2) overlapping work done in other areas (or disciplines) cannot be counted, and (3) the experience used to qualify for a previously issued license cannot be used to qualify for a license in another discipline.

The following outlines the various licensing requirements for the disciplines regulated by the Board:

Engineer/Land Surveyor-In-Training

The EIT and LSIT exams are typically taken before applying for licensure as a professional engineer or land surveyor. Each is an eight-hour NCEES exam offered twice a year which is used to test the fundamentals of engineering or land surveying. The applicant for the EIT exam must usually have completed three years of college or university education in a program approved by the Accreditation Board for Engineering and Technology (ABET) or three or more years of Board-approved experience. There are no educational or experience requirements to take the LSIT.

Applicants for licensure in one of the disciplines can waive the EIT or LSIT exam. However, the experience requirements to waive the EIT/LSIT exam are 14 to 17 years of qualifying experience, depending on the type of education the candidate has prior to applying for the examination. (A temporary regulation allows a candidate with a doctoral degree in engineering to waive the EIT requirement. The regulation, which expires in February, 2000, was adopted to encourage engineering professors to register.) A candidate waiving the EIT/LSIT can count work prior to obtaining his or her degree as qualifying experience.

Civil Engineer

A candidate for a civil engineer's license must meet all of the above requirements, have a total of six years of qualifying experience (four of which will be granted for an ABET-accredited BS degree; two years for a non-accredited BS degree), pass the eight-hour NCEES exam for civil engineering which is offered twice a year, and since 1988, also pass the California Seismic Principles and Engineering Surveying exams developed by the Board and administered twice a year. The candidate must also complete and pass the take-home test on California engineering laws and Board rules.

Structural and Geotechnical

To qualify for the title authorities of structural or geotechnical engineer, all of the requirements for a civil engineer must be met, and the appropriate exam developed by the Board must be passed. (The structural exam is 16 hours, while the geotechnical exam is 8 hours.) Also, additional qualifying experience is required. The candidate for structural engineer must have three additional years of “responsible charge” experience in structural design work and must submit three references from structural engineers to verify this. (“Responsible charge” is defined in Section 6703 of the B&P Code and means the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work or the direct engineering control of such projects. The Board further defines this term in Rule 404.1 of its regulations.)

The candidate for geotechnical engineer must have four years of “responsible charge” experience in soil engineering projects and submit four references from civil engineers, two of whom are actively engaged in the practice of “soil engineering.”

Other Professional Engineering Disciplines

The requirements for the other engineering disciplines are similar to those for a civil engineers except candidates are not required to take the Seismic Principles and Engineering Surveying exams. Some of the exams are provided by NCEES, while others are developed by the Board. All are eight-hour exams.

Land Surveyor

If a candidate for a land surveyor's license holds a LSIT certificate, they must have a total of six years of qualifying experience before they can take the exam. Four years will be granted for graduation from an approved program. The two years remaining work experience must include one year of responsible field training and one year of responsible office training. Candidates who do not graduate from an accredited program can still receive one year of credit for each year of post-secondary education as long as it is approved by the Board. Until January 1, 2000, the Board may grant two years experience for passing the LSIT exam. SB 2239 (Chapter 878, Statutes of 1998) deleted the discretionary credit for the LSIT exam after that date. A registered civil engineer only needs two years of experience in land surveying to take the exam. After January 1, 1999, all experience must be "broad based."

The Board does not use the national land surveyor exam but instead has developed its own exam. It is an eight-hour exam administered once a year. Land surveyors must also pass a take-home examination on the Board's rules and regulations.

Time Frame for Registration by the Board

Unlike Boards with on-going testing, this Board administers civil, chemical, electrical, and mechanical engineering exams as well as EIT and LSIT exams twice a year. Land surveying, agricultural, control system, corrosion, fire protection, geotechnical, industrial, manufacturing, metallurgical, nuclear, petroleum, quality, safety, structural, and traffic exams are administered once a year. The time from final filing date of applications to examination is consistent from year to year. The time from an examination date to issuance of license is also consistent from year to year. The length of time depends upon the examination grading process, but is not less than 3 months or more than 4 months.

AVERAGE DAYS TO RECEIVE LICENSE/ CERTIFICATE	EIT/LSIT	PE/PLS
Application to Examination:	60	105
Examination to Issuance:	91 - 122	
Total Average Days:	151 - 182	196 - 227

Continuing Education/Competency Requirements

There is no requirement that engineers or land surveyors participate in continuing education as a condition for license renewal, nor does the Board currently plan to adopt any such program. The Board may require as a condition of probation remedial education, including ethics courses, for engineers or land surveyors found to be guilty of violating the PE or PLS Acts.

Comity/Reciprocity With Other States

An engineer registered in another state may apply for California registration by comity. Comity applicants must take and pass (70% minimum score) the California Laws and Board Rules examination, a 25-question multiple-choice examination which is completed at home and returned to the Board office for scoring. California accepts the NCEES eight-hour examinations for the practice act branches of civil, electrical, and mechanical engineering and the title act branches except traffic, for which there is no NCEES examination. Civil engineering applicants must also pass the California Seismic Principles and Engineering Surveying (special civil) exam. If the home state has waived the EIT exam, the application is evaluated to see if the home state's waiver matches California's waiver requirements. If not, the applicant must either pass the EIT or have 15 - 17 years of experience.

Additional Requirements for Registration by Comity Summarized

Discipline	Board Laws and Rules (25-item take-home exam)	Seismic Principles and Engineering Surveying	California Exam (No NCEES equivalent)
Civil	X	X	
Electrical	X		
Mechanical	X		
Agriculture	X		
Chemical	X		
Control Systems	X		
Fire Protection	X		
Industrial	X		
Manufacturing	X		
Metallurgical	X		
Nuclear	X		
Petroleum	X		
Traffic	X		X
Geotechnical	X		X
Structural	X		X

ENFORCEMENT ACTIVITY

Enforcement Data

ENFORCEMENT DATA	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Inquiries	Total: 12,224	Total: 12,263	Total: 24,397*	Total: 16,381*
Complaints Opened (by Source)	Total: 243	Total: 279	Total: 325	Total: 245
Public (consumer)	108	159	99	92
Licensees	18	12	30	23
Other (gov't agency, Board)	117	118	196	130
Complaints Opened (By Type) **				
Unlicensed Activity	46	83	49	36
Competence/Negligence	79	124	143	155
Contractual	22	18	2	7
Fraud	26	19	7	7
Other	3	3	1	6
Record of Survey	14	25	155	71
Examination Subversion	66	43	29	35
Complaints Closed	Total: 232	Total: 271	Total: 330	Total: 223
Complaints Pending	Total: 125	Total: 133	Total: 123	Total: 142
Complaints Submitted to the Division of Investigation (DOI) (subset of Complaints Pending)	Total: 37	Total: 30	Total: 23	Total: 20
Compliance Actions	Total: 10	Total: 35	Total: 30	Total: 25
Final Citation – Order of Abatement	N/A***	3	3	6
Final Citation – Order to Pay Fine	N/A***	0	1	2
Cease & Desist/Warning	8	29	23	15
Mediated	2	3	3	2
Referred for Criminal Action ****	Total: 5	Total: 13	Total: 11	Total: 5
Referred to AG's Office *****	20	24	23	22
Accusations Filed	21	23	22	19
Accusations Withdrawn after Filing	0	2	1	2
Accusations Dismissed	1	1	1	1
Stipulated Settlements	Total: 9	Total: 15	Total: 10	Total: 8
Disciplinary Actions	Total: 19	Total: 23	Total: 18	Total: 16
Probation	15	14	11	9
License Suspension Only	0	2	0	2
License Revocation/Surrender	4	5	7	5
Other *****	0	2	0	0

The total number of "Disciplinary Actions" are those in which either license revocation, suspension or probation occurred.

* Inquiries: FY 96/97 total does not include information from 10/96 and 11/96 due to a computer malfunction; FY 97/98 total does not include 8/97 through 1/98 due to a computer malfunction.

** Complaints can be opened under more than one "type"; therefore, adding up the various types under "Complaints Opened (By Type)" will result in an erroneous "total."

*** The Board received the authority to issue citations in FY 95/96.

**** "Referred for Criminal Action" indicates those complaints submitted to the District Attorney's Office for the filing of criminal charges; it does not indicate whether or not the District Attorney actually filed charges.

***** "Referred to AG's Office" includes the number of cases submitted to the AG's Office for either the filing of an Accusation or a Petition to Revoke Probation; the term "Accusations" as used in this section also includes Petitions to Revoke Probation.

***** In two separate cases, the Board accepted the surrender of the Civil Engineer registration which authorized the practice of land surveying and issued a new Civil Engineer registration which did not authorize the practice of land surveying.

Enforcement Program Overview

NUMBER OF COMPLAINTS OPENED, COMPLAINTS CLOSED, COMPLAINTS PENDING, COMPLAINTS REFERRED TO THE DIVISION OF INVESTIGATION, ACCUSATIONS FILED, AND DISCIPLINARY ACTIONS TAKEN				
	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Complaints Opened	243	279	325	245
Complaints Closed	232	271	330	223
Complaints Pending	125	133	123	142
Complaints Submitted to the Division of Investigation (subset of Complaints Pending)	37	30	23	20
Accusations Filed	21	23	22	19
Disciplinary Actions	19	23	18	16

Note: It is rare that a complaint will be opened, submitted to DOI, closed, have an accusation filed, and have disciplinary action taken all in the same fiscal year.

Case Aging Data

AGING OF PENDING COMPLAINT INVESTIGATION CASES (includes time at DOI and expert, if applicable)				
NUMBER OF PENDING CASES BY AGE	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
1-30 days	17	19	20	14
31-60 days	21	16	17	12
61-90 days	19	27	28	24
91-120 days	11	17	6	14
121-180 days	11	10	10	16
181-270 days	22	18	21	42
271-365 days	14	24	11	13
Over 365 days	10	2	10	7
TOTAL NUMBER OF PENDING CASES	125	133	123	142
PERCENTAGE OVER 180 DAYS	37%	33%	34%	44%
PERCENTAGE OVER 365 DAYS	8%	2%	8%	5%

AVERAGE AGE OF PENDING COMPLAINT INVESTIGATION CASES (includes time at DOI and expert, if applicable)				
	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
AVERAGE AGE OF PENDING CASES IN DAYS	145	139	140	167

AGING OF CASES AT THE ATTORNEY GENERAL'S OFFICE								
	FY 1994/95		FY 1995/96		FY 1996/97		FY 1997/98	
Pre/Post Accusation Filing *	Pre	Post	Pre	Post	Pre	Post	Pre	Post
0-91 days	4	5	5	7	7	5	3	7
92-182 days	4	6	6	1	3	7	1	3
183-274 days	2	2	3	4	0	1	5	1
275-365 days	0	5	0	1	0	5	2	3
1-2 years	4	7	1	2	1	0	1	4
2-3 years	0	1	1	2	0	1	0	0
Over 3 years	3	2	0	0	0	1	0	0

* Pre-Accusation is calculated based on the date the case is submitted to the AG's Office to June 30 (the end of the fiscal year). Post-Accusation is calculated from the date the Accusation is filed to June 30 (the end of the fiscal year).

Citations and Fines

CITATIONS AND FINES	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Final Citations – Order of Abatement	N/A	3	3	6
Final Citations – Order to Pay Fine	N/A	0	1	2
Amount Assessed	N/A	N/A	\$500.00	\$350.00
Reduced, Withdrawn, Dismissed	N/A	0	0	1
Amount Collected	N/A	N/A	\$500.00	\$350.00

The Board received the authority to issue citations in FY 95/96.

Results of Complainant Survey

The JLSRC directed all boards and committees under review this year to conduct a consumer satisfaction survey to determine the public's views on certain case handling parameters. (The Department of Consumer Affairs currently performs a similar review for all of its bureaus.) Since 1993, the Board has sent a Complaint Survey to the complainant when a complaint has been closed, along with a self-addressed, prepaid postage envelope. Since January 1993 the Board has sent 826 surveys and received 125 responses. When surveys are returned with questions or negative comments, the complainant is contacted to clarify concerns and/or answer any questions.

EXISTING (1993 – 1998) CONSUMER SATISFACTION SURVEY RESULTS		
QUESTIONS	RESPONSES	
# Surveys Mailed: 826 # Surveys Returned: 125	Yes	No
1. Was our representative courteous?	97%	3%
2. Did our representative understand your problem?	85%	15%
3. Were you kept advised of the status of your complaint?	87%	13%
4. Were the reasons for case closure explained to you in a clear and concise manner?	86%	14%
5. Were you satisfied with the results?	63%	37%
6. Even if the matter was not resolved in your favor, do you feel that your case was dealt with in a fair and reasonable manner?	81%	19%

The following are samples of the comments, both negative and positive, received on the Complaint Surveys:

“I was very impressed by the professional handling of this matter by staff. Without assistance this matter would probably not have gotten resolved. I owe a deep gratitude for your assistance.”

“In response to ‘Was our representative courteous?’ The representative would call and leave a message for me to call her back. She would never wait, she would call back – way too soon. I could see if it had been a few more days, but the same day – No No!”

“Thanks for all your help. Your attention finally forced the insurance co. to settle our claim. Thanks so much!”

“I thought that practicing without a license would be dealt with much more severely.”

“I feel the case was closed because [the subject] retained the services of an attorney”

Board staff is currently updating and amending the survey questions and changing to a 5-point grading scale. The following are some of the proposed changes to the survey questions:

- ◆ Were you satisfied with knowing where to file a complaint and whom to contact?
- ◆ Were all your questions regarding the complaint process answered in an understandable manner?
- ◆ Were you satisfied with the final outcome of your complaint? If not, why not?
- ◆ Was the matter resolved as you had hoped?
- ◆ Were your telephone calls returned in a timely manner?
- ◆ Do you have any suggestions or comments that would improve our service to consumers?

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Enforcement Expenditures

EXPENDITURE CATEGORY	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Attorney General	\$236,739	\$278,894	\$220,702	\$283,375
Office of Administrative Hearings	38,889	67,807	24,776	66,595
Evidence/Witness Fees	61,383	108,878	87,413	90,308
Division of Investigation (DOI) – Investigative Services *	259,986	58,997	3,406	15,121
TOTAL	\$596,997	\$514,576	\$336,297	\$455,399

* DOI is budgeted and billed as pro-rata. The total year-end expenditures equal the total budgeted amount. For example, if we over-expend the budgeted amount in one year, the budgeted amount in the next year is increased to cover the previous year's expenditures.

Cost Recovery Efforts

COST RECOVERY DATA	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Potential Decisions *	20	24	19	16
Decisions Ordering Costs *	11	13	11	10
Amount Requested **	\$69,645	\$63,147	\$75,630	\$58,377
Amount Ordered **	\$51,703	\$46,935	\$59,249	\$34,069
Amount Collected ***	\$25,563	\$28,938	\$9,419	\$665

* "Potential Decisions" are those decisions issued by the Board in administrative disciplinary matters in which cost recovery was requested initially. Cost recovery is not ordered in Default Decisions or when the Accusation is dismissed. Additionally, the Board usually waives recovery of its costs when accepting the voluntary surrender of the license. For example, in 96/97 there were five defaults, one dismissal, and two voluntary surrenders. Cost recovery was not ordered in these cases.

** The difference between amount requested and amount ordered is the amount not ordered by the Administrative Law Judges (ALJs). In ordering recovery of the Board's costs in a Proposed Decision, the ALJs determine the "reasonable" amount of the costs. There are no guidelines to follow in determining what constitutes "reasonable"; therefore, the ALJs vary widely on what is considered "reasonable."

*** If reimbursement of the Board's investigative and enforcement costs is ordered as a condition of probation, the subject is given a period of time in which to pay or is allowed to make payments. However, if the subject fails to pay in the time required, it is considered a violation of the probationary order. If the Board orders the probation terminated, all of the conditions including the order to pay reimbursement are also terminated. In some cases, rather than terminate the probationary order, the Board will allow the subject additional time to pay. Additionally, if reimbursement is ordered in a decision which orders the revocation of the subject's license, the reimbursement must only be paid if the license is reinstated. The difference between the amount ordered and the amount collected can be explained as follows:

FY 94/95:	\$3,350, failed to pay, probation terminated. 20,000, must pay if reinstated. \$2,790, allowed to make payments.
FY 95/96:	\$4,000, failed to pay, probation terminated. \$5,208, must pay if reinstated. \$8,790, failed to pay in time required, re-ordered to pay in FY 97/98.
FY 96/97	\$49,825, allowed to make payments.
FY 97/98	\$5,944, must pay if reinstated. \$28,126, allowed to make payments.

RESTITUTION TO CONSUMERS

RESTITUTION DATA	FY 1994/95	FY 1995/96	FY 1996/97	FY 1997/98
Amount Ordered	\$6,011	\$22,936	\$11,175	\$45,936
Amount Collected *	\$6,011	0	\$5,000	\$25,000

* Restitution may be ordered as a condition of probation. The subject is given a period of time in which to pay or even allowed to make payments. However, if the subject fails to pay the restitution in the time required, it is considered a violation of the probationary order. If the Board orders the probation terminated, all of the conditions including the order to pay restitution are also terminated. In some cases, rather than terminate the probationary order, the Board will allow the subject additional time to pay. Explanations for the difference between the amount ordered and the amount collected follow:

FY 95/96:	\$4,500, failed to pay, probation terminated
	\$18,436, failed to pay in time required, re-ordered to pay in FY 97/98
FY 96/97	\$6,175, allowed to make payments
FY 97/98	\$2,500, failed to pay, probation terminated
	\$18,436, allowed to make payments

COMPLAINT DISCLOSURE POLICY

It is the policy of the Board to provide information to the public regarding complaints and disciplinary actions resulting from violations of the Professional Engineers Act, the Professional Land Surveyors' Act, and the Regulations of the Board. The Board keeps records of complaints for five years. The Board discloses the following information upon request after the completion of an investigation: the number of complaints against the individual; the date the complaint was received; and the disposition of the complaint, such as compliance obtained, mediated/resolved, referred for formal legal and/or disciplinary action, or any other action taken against the subject. If the complaint is still in the investigation stage or if the investigation reveals that there was no violation of the law, no information is disclosed. The Board keeps records of formal disciplinary actions (citations and accusations) and discloses the information as required by law. The information provided includes the action taken, the reasons for the action, and the date of the action. If the matter is final, information regarding compliance with the order is also provided. If the citation or decision on the accusation is not yet final, its procedural status is provided. The Board also publicizes its disciplinary actions by issuing press releases, publishing articles in the Board's newsletter, posting the information on the Board's internet site, and providing information to other states' regulatory boards.

CONSUMER OUTREACH AND EDUCATION

Consumer education is the most cost-effective form of consumer protection. The Board has established many successful ways to provide consumers with necessary information. In December 1994, the Board published the free publication, "*Consumer Guide to Professional Engineering and Professional Land Surveying*." It is distributed to libraries, to city and county building departments, and at public outreach meetings and is also available on the Board's web site. Our highest priority is immediate dissemination of information following floods, earthquakes or other disasters, when many consumers need the services of an engineer or land surveyor. For example, the consumer guide was distributed at "flood forums" held following this year's flooding in Northern and Southern California.

In July 1995, the Board's Enforcement Unit began an outreach educational program that has been very successful. Board members and staff meet with local public agencies and various professional societies and associations to discuss issues including unlicensed activity and violations of the practice acts. These meetings have resulted in cities and counties filing more complaints against negligent engineers and land surveyors.

Also in 1995, the Board began sending its newsletter, which includes summaries of all disciplinary actions taken by the Board, to all licensees in order to further educate them regarding violations of the law. The newsletter had previously been sent only to California public agencies and anyone who requested it.

The Board now has a web site (<http://www.dca.ca.gov/pels>). The complete text of the *Consumer Guide* is available there, as well as a consumer complaint form. The web site contains the Board-maintained regulations (Title 16, California Code of Regulations sections 400 - 474.5) and has links to the PE Act and the PLS Act on the Legislative Counsel's web site. License look-up capability should be available no later than June 1999 and accounts of all disciplinary actions taken in the past five years will also be available before the end of this fiscal year.

In 1998, the Board published a *Guide to Engineering and Land Surveying for City and County Officials* to help county surveyors, city engineers, public works officials, and city and county building departments quickly look up what engineers and land surveyors can legally do and what constitutes unlicensed practice. This guide will not only help the officials do their job, it will enable them to pass on correct information to California's consumers.

PART 2.

Board for Professional Engineers and Land Surveyors

BOARD'S RESPONSE TO IDENTIFIED ISSUES AND RECOMMENDATIONS FROM PRIOR 1996/97 SUNSET REVIEW

ISSUE #1. Should the Joint Committee support a complete revision of the Professional Engineers' Act ("PE Act Rewrite") as proposed by the Board?

Recommendation: *The Joint Committee has been unable to fully assess the ramifications of the "PE Act Rewrite" as proposed by the Board, and as such, has no position at this time. The Board must demonstrate how the Rewrite will improve the existing regulatory situation for consumers. To the extent the Rewrite moves away from title acts, if the title protections cannot demonstrate how it protects the public from harm, the Joint Committee is supportive of sunseting the titles.*

Additional Comments and Questions from JLSRC: The Joint Committee, the Legislature, and the Administration were unwilling to delegate to the Board absolute authority to eliminate title acts and create practice acts as originally proposed in AB 969. This is generally the prerogative of the Legislature and the Governor. However, if there are other changes which were contained in AB 969 which the Board still believes are necessary to protect the public safety, then they should be brought to the attention of the Joint Committee. Each statutory change proposed should be fully explained, as well as how the change from current law would impact the engineering profession. One of the reasons for the failure of AB 969 as originally proposed was a lack of understanding and confusion about what the Board was trying to accomplish by rewriting the entire Professional Engineers Act.

Board Response:

In 1997, after many hours of discussion, informational forums, and meetings, the Board of Registration for Professional Engineers and Land Surveyors (Board) introduced Assembly Bill 969 (Cardenas). It updated the way engineers are registered, clarified the Professional Engineers Act (B&P Code sections 6700 to 6799), and arranged the information in a more orderly fashion. Because of the complex issues and the amount of information in the bill, AB 969 became a two-year bill.

When AB 969 was scheduled for its first policy committee hearing, the committee and the author requested that the Board reduce the bill in scope to address only the most important issue. Although the Board believed all of the proposed revisions of the PE Act were necessary, it determined that the issue needing immediate attention was deregulation of the title acts. The bill was amended to address one of the recommendations of the JLSRC — the issue of unnecessary title act regulations in the engineering profession. The first step to updating and clarifying the PE Act, therefore, became elimination of the title act branches of corrosion, quality, safety, and traffic engineering.

The main reason for discontinuing these branches was that few states, if any, recognize these branches. Furthermore, there are no national examinations for those titles, nor are there any accredited degree programs in those branches at any universities; there are a small number of candidates for examination in these titles; and there are no enforcement cases involving practice in these branches of engineering. Given these factors and the costs of developing and administering the examinations and the opinions of the entities that hire such engineers, it is apparent that deregulating these branches of engineering would not endanger the health, safety, property, or well-being of California consumers.

When AB 969 was heard in the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee, the Committee decided that California's densely populated cities, complex transportation systems, varying terrain and seismic instability make regulation of traffic engineering important to California consumers. The bill was amended to continue regulation of the traffic engineering title. AB 969 passed both houses and was signed by the governor. As chaptered in July, it will eliminate the restriction on the use of the corrosion, quality, and safety titles as of January 1, 1999.

Currently registered corrosion, quality, and safety engineers will still be able to use those titles. The last examination for the three was administered in October, 1998.

Only engineers registered in the branches will be entitled to use the titles of "consulting __ engineer," "registered __ engineer," "licensed __ engineer," or "professional __ engineer" in conjunctions with corrosion, quality, or safety. Other professional engineers who are registered in other branches of engineering still will not be able to use those terms, because they have not been registered (licensed) by the Board in any of those three engineering branches. Anyone, professional engineer or otherwise, will be able to use the simpler terms of "corrosion engineer," "quality engineer," or "safety engineer," on or after January 1, 1999, as long as they do not add the term(s) "consulting," "registered," "licensed," or "professional."

The Board is committed to continuing a licensing program that appropriately safeguards the life, health, property and public welfare of Californians. We believe that regulation of engineering practice is necessary and effective in protecting the public safety and that eliminating three California-specific title act examinations is a good beginning towards clarification and simplification of the regulatory process.

The Board still believes in many issues that it sought to address in the PE Rewrite. Some of these issues should also be addressed in the Professional Land Surveyors Act as they are not engineering-specific issues, but rather issues that affect the consumers and practitioners of both professional engineering and land surveying. The following is intended to advise the committee of those issues should it decide to incorporate any or all of them into legislation:

- Modify the expiration date of Board member terms from June 1 to June 30 in order to be consistent with the State fiscal year calendar.
- Authorize the Board to adopt, by regulation, a Code of Professional Conduct in order to better serve the professionals and protect the consumer (LS Act also).
- Authorize the Board to implement a retired/inactive license status (LS Act also).
- Allow the Board to examine other engineers in addition to civil engineers on seismic requirements in order to better safeguard the consumer.
- Allow the Board to rescind a license or certificate if it was issued in error (LS Act also).
- Clarify and further define the Board's authority to take action against a licensee or unlicensed individual in order to better serve the consumers, the public, and the licensees (LS Act also).

ISSUE #2. Should the State continue to regulate the practice of Civil, Electrical, and Mechanical Engineering and Land Surveying, and the fifteen(15) title act disciplines of engineering?

Recommendation: *The State should continue regulating the practice of civil, electrical, mechanical engineering and land surveying. However, other areas of engineering regulated by the Board should be limited to areas in which there is a clear potential for harm to the consumer. The concept of "Title Acts" of engineering should be reevaluated. If it cannot be demonstrated that the practice as encompassed by the title, if performed unregulated, poses the risk of health, safety, or financial harm to the public, then that practice should be unregulated. If unregulated, the title restriction should be abolished. Recommend that the Joint Committee, the Department, and the Board work together to determine what areas of engineering should be regulated and how title acts should be eliminated.*

Additional Comments and Questions from JLSRC: Although the Board was not granted legislative authority to make determinations about which title acts should be eliminated or converted to practice acts, the Board has always had the authority to evaluate whether specific title acts are necessary and make recommendations to the Legislature and the Department. The Board took the first step in accomplishing this through the passage of AB 969, which eliminated the title act branches of corrosion, quality, and safety engineering. The Board also conducted two meetings to allow affected engineers an opportunity to respond to this original proposal. At the outset, elimination of the title act for traffic engineers was also considered, but agreement was reached that deregulation of this branch could endanger the safety of the public on our highways, and local cities and county transportation agencies required registration. The Board should now make recommendations to the Joint Committee on what other title acts could potentially be eliminated without endangering the health, safety, property, or welfare of the public. The Board should clearly demonstrate why the title act should be continued.

The Board should consider such things as: (1) how many of the engineers within the particular title act branch have had to meet the examination requirement (or were instead grandfathered when the title act was adopted); (2) the number tested within the branch each year; (3) how many other engineers possibly work within this discipline and are not registered with the Board;

(4) the number of other states which regulate engineers in the designated branch; (5) who generally hires this type of engineer and has oversight of their work (employment by government, exempt industries, or in private practice); (6) whether the engineer is in responsible charge and using independent judgment on engineering projects, or is generally supervised or required to have the work approved (stamped and signed) by others; (7) who are the consumers of these engineering services and are they sophisticated enough to choose a qualified engineer in this branch; (8) if there is evidence of actual or potential damage to the public and if an individual consumer would be directly or indirectly affected by the incompetent or negligent work of the engineer; (9) whether instances of damage or harm to the public would have occurred anyway even though registration exists (e.g., problems more directly related to some other aspect of engineering or to an exempt area); (10) if local government, state or federal agencies require registration in the branch to perform the particular engineering services; (11) if there are other local, state, or federal agencies which regulate or have oversight of the engineering services provided by the registered engineer; (12) the extent to which the engineering branch overlaps with others and whether the engineer could be assigned to another regulated branch based on prior experience?

Board Response:

The Board is currently working with the Joint Legislative Sunset Review Committee, the Department of Consumer Affairs and various engineering professions to determine what title acts should be regulated and how. The chart on the following two pages summarizes the information requested in the twelve questions above, and further discussion of the issue follows the chart.

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the Chart in file sm#2chart

The Board, the DCA, and the JLSRC all agree that the practices of civil, electrical, and mechanical engineering and land surveying should continue. This issue has not changed since the initial Sunset review. The structural and geotechnical engineering licenses are title authorities, not title acts. They are granted to civil engineers who have demonstrated to the Board their qualifications to use the titles by extended experience and mastery examination. The Board does not plan to make changes to the structural or geotechnical title authorities.

History of Title Act Registration in California

The Board of Registration for Civil Engineers was created in 1919 due to the failure of the Saint Francis Dam (Chapter 766, Statutes of 1919). A law was then enacted requiring the registration of civil engineers. When Committee hearings of the bill were held, a difference of opinion developed between proponents of registration by branch and those who favored registration in the category of professional engineer only. Opposition also developed from those engineers who were against the philosophy of licensing in general. The mining engineers strongly objected to any regulation of their activities, as did some representatives of the mechanical and electrical engineering groups. Because the principle opposition came from groups who practiced in branches other than civil engineering, the bill was amended to exclude them and require registration of civil engineers only. It was in this form that Assembly Bill 174 was signed by the Governor (Chapter 801, Statutes of 1919). Initially the area of overlap between architecture and engineering was considered relatively unimportant, but as taller and taller buildings were being created it became a source of increasing controversy. To resolve the disputed area of overlap between architecture and structural engineering, a solution was offered creating the title authority of structural engineer. Registered civil engineers who were found to be qualified in structural engineering could use the title structural engineer. Civil engineers sponsored legislation creating the structural engineer title authority (Chapter 254, Statutes of 1931). In 1933, the Board's jurisdiction was expanded to include the licensing of land surveyors.

It appears that the technical advances made during the forties, possibly due to World War II, resulted in the registration, by title, of engineers in the branches of chemical, electrical, mechanical, and petroleum engineering. This was done through legislation in 1947. For the next twenty years there were many influences of varying importance which contributed to the rapid advancement of engineering. The more noteworthy of these influences included the Korean War, the struggle for missile supremacy, and the race for exploration and control of space. Because of the more specialized use of electrical and mechanical engineering, the law was amended in 1967 to change electrical and mechanical engineering from title act registrations to practice act registrations. Also in 1967, the legislature created the title disciplines of metallurgical and industrial engineering – which the Board opposed. A bill was then passed by the Legislature (Chapter 895, Statutes of 1968) which gave the authority to create new title acts to the Board. That bill also contained a provision that required any group of engineers applying for registration with the Board to first have in place an accredited college program in their respective branch of engineering. This would make it very difficult for any new groups to apply for registration.

Several years passed and the composition of the Board changed. In 1971 legislation was passed repealing the provision relating to the requirement that a discipline be covered by an accredited program. This legislation had the effect of removing a major road-block to the various disciplines seeking to apply to the Board for recognition and various groups petitioned the Board for registration. In the early seventies the Board received petitions from persons representing the branches of aerospace, agriculture, air pollution, communication, control system, corrosion, environmental, fire protection, manufacturing, nuclear, quality, safety, and traffic engineering.

Hearings were held and all petitions were approved except for the petitions of air pollution, aerospace, communication, and environmental engineers. In 1976 and 1977 the Board was finally able to adopt formal regulations to implement the engineering disciplines which it had recognized over the proceeding years.

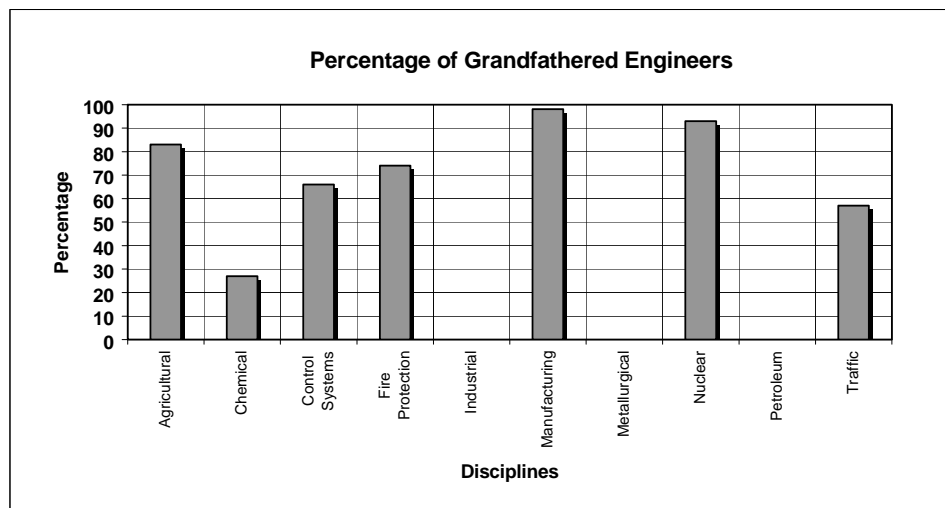
In 1982 the title authority of geotechnical engineer was added to the practice of civil engineering by the Legislature (Chapter 646, Statutes of 1982).

In 1985 Senate Bill 1030 (Chapter 732, Statutes of 1985) was passed by the Legislature with support by this Board. The bill amended Section 6732 of the B&P Code to codify the existing engineering disciplines into the Professional Engineers Act, thereby recognizing them by statute rather than by Board Rule. It also repealed Section 6700.1 of the B&P Code which allowed for the establishment of new engineering disciplines by petition to the Board.*

As of January 1, 1999, examinations in three title acts (corrosion, quality, and safety) have been eliminated. There are 10 remaining title acts in question: agricultural, chemical, control systems, fire protection, industrial, manufacturing, metallurgical, nuclear, petroleum and traffic engineering. The question remains how the public is protected by granting engineers a license which regulates the use of the title but not the practice. That is, anyone, registered or not, can legally practice any title-act discipline as long as it doesn't fall within non-exempted civil, mechanical or electrical engineering practice. Furthermore, if there is an enforcement case against a title-act engineer, the Board can revoke the title-act license, but the individual can still practice in that discipline, just as anyone not licensed can practice in a title-act discipline. Unlicensed people are only prohibited from using the title.

Several of the remaining title acts were enacted with grandfather provisions, which allowed practitioners to submit evidence of experience in the field in order to be registered without examination. Six disciplines have a percentage of currently-registered grandfathered engineers greater than 50%: agricultural (83%), control systems (66%), fire protection (75%), manufacturing (98%), nuclear (93%), and traffic (57%). That is to say, the majority of the engineers in the given discipline were not examined when the Board created that title act. More currently-registered chemical engineers took and passed the examination than were grandfathered (27%). The three other title acts, industrial, metallurgical, and petroleum did not have grandfather clauses.

* Historical background based in part upon "A Brief History of Engineering Registration," prepared in 1962 by Board staff member Vincent R. Fisher.

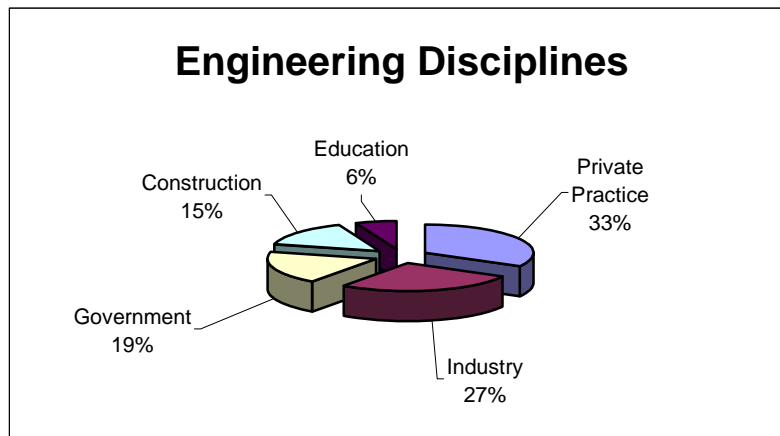


The vast majority of engineers licensed in title-act disciplines are employed by exempt industries. There are licensing exemptions for engineers who work for industrial corporations, public utilities, or the federal government. In 1997's legislative session (Chapter 705, Statutes of 1997), the industrial exemption was broadened to include temporary employees, contract employees, and those hired through third-party contracts. These engineers, while in responsible charge*, do not have liability for work performed. The liability is carried by the industry or corporate employer.

Very few title-act engineers consult to the general public. However, a significant number of fire protection and traffic engineers consult either on their own or in a design-engineering firm. Sometimes local government or state agencies require a stamp from a fire protection engineer on fire protection designs or from a traffic engineer on traffic studies or designs. Often, those agencies do not know the difference between practice act and title act disciplines. Fire protection and traffic engineering work does not require a stamp since an individual does not have to be registered to do the work. The Board is currently informing city, county, and state agencies about our laws through the enforcement unit's outreach program. It is important that local and state government agencies understand the distinction between the practice acts and the title acts.

The number of non-registered engineers in the 10 title act disciplines is difficult to estimate since any person can do the work, they simply cannot use the title of the discipline unless they are registered. Statistics from the California Society of Professional Engineers, which has approximately 3,000 members from all engineering disciplines, indicate the following distribution of engineers: private practice 33%, industry 27%, government 19%, construction 15%, and education 6%; however, this does not include any breakdown between the practice acts and the title acts.

* Responsible charge is the independent control and direction, by the use of initiative, skill, and independent judgment, of the investigation or design of professional engineering work.



As discussed in the response to Issue # 1, corrosion, quality, and safety engineering will no longer be examined after January 1, 1999. The disciplines were eliminated based in part upon the justification that there was no national exam available, thus California was spending resources to develop an examination and register engineering titles not recognized by other states. In addition, there were very few individuals being tested each year, and it was determined that eliminating them would not harm public safety.

Many of these same factors have been considered in determining a recommendation as to whether the Board should continue to regulate the remaining 10 title acts. While the Board believes that title act registration provides minimal public protection, at hearings the Board held to consider the elimination of these title acts there has been a great deal of opposition. The Board uses national examinations for qualifying individuals for registration in the remaining titles, except traffic engineering. According to survey results from the National Council of Examiners for Engineering and Surveying (NCEES), 43 to 50 states, depending upon the discipline, use the NCEES examinations. This would indicate that they are recognizing the disciplines in some way.

Elimination of a title act would affect comity with other states and the ability of out-of-state engineers to become registered by comity. Currently, there are branches of engineering registered in other states that California does not recognize. The same process would apply if a title act branch were eliminated in California but not in other states. When such an engineer applies for comity, the application is evaluated by one of the Board's three senior engineering registrars to determine which California-recognized branch provides the best fit. The evaluation considers education, experience, and examination.

Aeronautical engineering is an example of such a branch. Aeronautical engineers in other states must take and pass the NCEES aeronautical engineering examination. The test is not administered in California because California does not register the branch. When an engineer registered as an aeronautical engineer in another state applies here for registration by comity, the engineering registrar looks for graduation with an engineering degree in an ABET* - accredited curriculum. With that degree and two years of experience under the supervision of a mechanical engineer, an aeronautical engineer would be allowed to substitute passage of the NCEES aeronautical engineering examination as the equivalent of passage of the NCEES mechanical engineering examination.

* Accreditation Board for Engineering Technology

The Board recommends that, for the present, the 10 title acts remain in place. The Board is considering the possibility of eventual elimination of the title acts, either through actual elimination of the title or through conversion to practice acts. There has been discussion at the NCEES of eliminating examinations for some of the title-act disciplines. Should that happen, we would consider introducing legislation to allow the Board to discontinue administering other title-act examinations (and therefore discontinue issuing new registrations) if there is no national examination in that branch. This would relieve the Board of the expense of developing new examinations or of continuing to regulate a branch of engineering no longer tested or regulated elsewhere in the United States.

ISSUE #3. Should all engineers be allowed to perform “supplemental work” in other engineering disciplines, as long as they are competent to perform in these areas based on their education, training and experience?

Recommendation: *The Board should define and justify its definition of “supplemental work,” but it should first discuss the concept of “supplemental work” along with any review regarding licensure and “title acts,” as previously recommended.*

Board Response:

Currently, civil engineers are the only registrants who can perform work in any of the other branches of professional engineering. Business and Professions Code 6737.2 allows supplemental work by a civil engineer as long as the work is incidental to or in conjunction with civil engineering work or study. For many years, civil engineers have provided and continue to provide sound engineering work in other branches as evidenced by the lack of enforcement cases filed against a civil engineer involving supplemental work.

The Board supports the concept of civil, mechanical and electrical engineers performing work that is incidental to work in their own discipline in the other engineering disciplines, as long as they are competent in these areas based on education, training, and experience. This would reduce the number of gray areas between the practice of similar or related engineering disciplines.

However, if the supplemental work concept were extended to any of the title act branches of engineering, protection for California's consumers would suffer. If a title act engineer is found to be incompetent, the strongest disciplinary action available to the Board is to revoke that engineer's registration. Revocation only prohibits the use of the title. It is still legal for the person to perform the same engineering work. If public safety is an issue, only the practice acts allow a range of disciplinary actions that can offer consumer protection.

What Other States are Doing?

During the summer of 1998, the Board sent a 15-question survey to all the other states and territories in preparation for the 1998 sunset hearings. Approximately one-third of the states did not reply because of the press of other business.

With regard to supplemental work, the states with generic registration allow overlap between the branches. However, eight of the eleven states which register according to discipline indicated they also allow overlap between branches if the engineer is competent and if the work is incidental.

Of interest is the fact that the authority to overlap into civil engineering is not as widespread. Only five of the states which register according to discipline allow overlap into civil engineering, whereas six states which register according to discipline specifically prohibit overlap into civil engineering, even if the work is incidental.

Responses to other questions indicate that California's unique licensing program was confusing to some respondents. For example, one of the questions was: "*Does your state have any title act registrations? ('Title act registration' means that any one can **perform** the engineering tasks, but only those who have taken and passed the exam and are registered by the Board **can use the title.**)*" Fourteen states responded that they register title acts. However, follow-up phone calls confirmed that the states did not understand the fundamental differences in California's unique "title act" provisions. California remains the only state with title act registrations.

Further, despite the care taken to write other questions and provide explanations about California's licensing program in simple terms, many questions were answered, "I don't understand the question." We believe this is because of the complicated manner in which California registers engineers.

SB 2069/Knight (1998 Legislative Session)

In 1998, Sen. Knight introduced Senate Bill 2069; the bill was sponsored by the California Legislative Council of Professional Engineers (CLCPE). While the Board opposed the bill for a variety of reasons, the Board could not assist in drafting proposed amendments since CLCPE was not able to identify the perceived problem which it was trying to solve with the bill.

The first area of concern with SB 2069 was the proposed addition of Section 6730.3 to the Professional Engineers Act. The language would have allowed for overlap by **any** engineer — regardless of the branch or title in which he/she was examined — into the branches of civil, electrical, or mechanical engineering if competent and proficient as determined by education or experience. However, those engineers would only have been permitted to use the title of the branch in which they were registered. In other words, an engineer whom we register only by title would be able to practice civil, electrical, or mechanical engineering without ever having demonstrated or having been examined for competence in that area.

It also appears that this bill could be considered an attempt to end-run the requirement that civil engineers take the California-specific Seismic Principles and Engineering Surveying examinations. In 1985, the legislature, through a bill authored by the Chair of the Senate Business and Professions Committee (Chapter 1134, Stats. of 1985), directed the Board to examine all civil engineering applicants in the areas of seismic principles and engineering surveying. SB 2069 would have allowed engineers in all branches to practice civil engineering without having demonstrated their competence through examination in either seismic principles or engineering surveying.

Furthermore, while SB 2069 seemed to make just one change by allowing for overlap between the branches of engineering, in reality the bill either created up to 15 new practice acts of engineering **or** totally deregulated all branches of engineering.

Following meetings with the sponsor of the bill, it was very unclear to the Board what they were attempting to achieve with this bill. The sponsor seemed to be striving to regulate the entire scope of engineering via generic registration, but the format that was pursued in SB 2069 was not generic registration. Generic registration allows for the regulation of the practice of each branch of engineering; it does **not** regulate the practice of some branches and the title of other branches.

Moreover, under the most literal reading, the bill would have deregulated the entire practice of engineering by allowing only for title act registration, thereby leaving regulation up to local agencies — the state's individual cities and counties. The Board strongly advocated the position that having 58 sets of rules among California's counties, and hundreds of other sets of rules among the cities, would hold engineers in different areas of the state to greatly-varying standards. The Board's statutory mandate is to protect the public health, safety and welfare. SB 2069 would have eliminated all avenues of consumer protection.

Lastly, SB 2069 failed to recognize the distinction between practice acts and title acts and did not acknowledge the title authorities of structural engineering and geotechnical engineering. Under current law, for example, the Health and Safety Code and the Education Code, respectively, require that any person designing a hospital or a public school must be a registered Structural Engineer. As drafted, SB 2069 compromised public safety by attempting to override the Legislature's directive that hospitals and public schools be designed only by those who have passed the comprehensive structural engineering examination.

Respectfully, it was and still is the Board's opinion that the addition of one section of law, as proposed in SB 2069, would not accomplish the sponsor's objective by overriding all other conflicting sections. The Board supports generic registration, but not in the pure form. Instead, the Board supports quasi-generic registration, where the branch(es) of engineering in which an engineer has been examined is identified and publicized. The **practice** of each branch of engineering would be regulated but some overlap between branches (as determined by education, examination, and experience) would be allowed.

Registration of Doctors and Attorneys as Compared to Professional Engineering Registration . . . and SB 2069

One of the fundamental flaws in the thought process represented in SB 2069 is the presumption that all engineers (regardless of their “branches”) will be legally authorized to practice in whatever branch of engineering they so desire. This strongly conflicts with the only justification for having a Professional Engineers Act; i.e. public health, safety, and welfare.

It is often said that medical doctors get by with only “one license” in California, irrespective of their intended specialty, and that they gain their specialty license by “certificates” that come later from sources other than the Medical Board of California. The same is said for attorneys, i.e.; once licensed, they can practice any part of the law which they choose. To a great extent, this is true. It is also often suggested that what is good enough for doctors and lawyers ought to be good enough for engineers.

However, just as true are the following statements:

- Medical Doctors all start out with a medical degree that is fundamentally the same, no matter which school they attend. Likewise, almost all lawyers complete the same American Bar Association-stipulated legal education.
- Virtually all medical doctors in California take the one/same medical examinations prior to starting their practices. All lawyers in California take the same bar exam prior to entering practice.
- Conversely, there are dozens of different kinds of engineering degrees. The curricula for a chemical engineer versus that of a civil engineer or an electrical engineer are so vastly different that more than 50 percent of their classes/curricula are not recognizably similar.
- Perhaps more importantly, and this is true throughout the entire United States, there is no common licensing examination that is taken by all branches of engineering. In other words, unlike doctors and lawyers, a civil engineer takes a different test than does an electrical or mechanical or nuclear engineer.
- Engineers in different branches perform very different work; in many instances, so different that they are really different professions. It would be hard to imagine an electrical engineer or nuclear engineer or fire protection engineer being able to competently practice civil engineering without receiving additional substantial formal education in civil engineering.

In summary, the Board would like to reiterate its support for the concept of quasi-generic registration, where the branch(es) of engineering in which an engineer has been examined is identified and publicized. The **practice** of each branch of engineering would be regulated but some overlap between branches (as determined by education, examination, and experience) would be allowed.

ISSUE #4. Should the Board of Professional Engineers and Land Surveyors be continued as an independent board, or should its operation and functions be assumed by the Department of Consumer Affairs?

Recommendation: *An independent Board of Professional Engineers and Land Surveyors should be continued. However, the sunset date for this Board should only be extended for two years, to July 1, 2000, because of major unresolved issues dealing with the regulatory authority of this Board. The review of this Board should only be limited to those unresolved issues as identified by the Joint Committee.*

Board Response:

This Board, consisting of practicing engineers and land surveyors and public members, should continue to regulate the practices of professional engineering and land surveying in California.

Public members represent the interests of consumers and provide a balance between consumer interests in public protection and the interests of the professions of engineering and land surveying.

Board members who are registered to practice engineering and land surveying help the public members and staff stay current with and understand innovations in engineering and land surveying. Professional members knowledgeable about structures, soil erosion, bridge and highway design, and mechanical and electrical issues help protect California citizens by providing sound, practical, and immediate advice during periods of disaster, when reviewing enforcement matters, and when making policy decisions.

Both engineering and land surveying are highly technical, and the professional members of the Board bring a level of knowledge that would be unavailable in a bureau setting.

ISSUE #5. Should the composition of the Board be changed?

Recommendation: *The total membership of the Board should not be changed, but the Board should be structured so as to adequately reflect the licensing population of engineers in the private and public sector.*

Board Response:

The Board agrees with the DCA recommendation. Existing law authorizes the Governor to appoint registrants/licensees and public members and the Senate Pro Tempore and the Assembly Speaker to each appoint one public member to the Board.

The people who have been and currently are members of the Board come from diverse backgrounds. James W. Foley, Jr., P. E., appointed to the Board in October, 1998, has worked for the City of San Jose since 1980 and is currently department manager of the design and construction division for the Department of Public Works. He has acted as the city engineer for

the City of Campbell. Foley was appointed as one of the Board's six registered/licensed members.

The Board has previously had both public and professional members who were government employees. Among others, Joel B. Klein, an electrical engineer employed by the California Energy Commission, served as a Board member from 1977 to 1986. Sharon Jasek Reid, an employee of San Diego County Department of Public Works, served as a public member of the Board from 1983 to 1995. Technical Advisory Committee (TAC) members are engineers and land surveyors in both the public and private sector who are appointed by the Board. Public-sector and private-sector employees are hired as Subject Matter Experts to develop examinations and as Technical Experts to review enforcement cases.

The following chart summarizes the membership status and background of the current board members.

Position	Appointed	Term Expires	Status	Current Member, Background/Expertise
Civil Engr.	Feb. 1992	June 1999	P.E.	Ted C. Fairfield, P. E. — Civil Engineer: Sole Proprietor, Consulting Engineering Firm
Structural	Oct. 1998	June 2000	P.E.	Gregg Brandow, P. E. — Structural Engineer: President, Structural Engineering Firm; Adjunct Professor of Engr., Univ. of Southern Calif.
Electrical Engineer	Oct. 1996	June 2001	P.E.	Vincent Di Tomaso, P. E. — Electrical Engineer, Retired
Mechanical Engineer	June 1993	June 2000	P.E.	Quang D. Vu, P. E. — Mechanical Engineer; Majority Owner, Electrical & Mechanical Engr. Consulting Firm
Other Branch of Professional Engineering	Oct. 1998	June 2002	P.E.	James W. Foley, Jr., P. E. — Geotechnical Engineer; Mgr. of Design & Construction Div., Dept. of Public Works, City of San Jose
Land Surveyor	Nov. 1995	June 1999	P.L.S.	George Shambeck, P. L. S. — Land Surveyor; President, Civil Engineering and Land Surveying firm
Public # 1	Oct. 1996	June 2000	Public	Marilyn Lyon — Local Elected Official
Public # 2	Feb. 1993	June 2002	Public	Stephen H. Lazarian, Jr. — Licensed Contractor; Attorney
Public # 3	July 1995*	June 1999	Public	Millicent Safran — Legal Secretary/Community Volunteer
Public # 4	Dec. 1996*	June 1999	Public	Andrew J. Hopwood — Petroleum Industry
Public # 5	June 1993	June 2000	Public	Myrna B. Powell — Consumer Advocate
Public # 6	March 1994	June 2002	Public	Kathryn Hoffman — Information Technology Manager
Public # 7	Oct. 1998	June 2002	Public	David Chen, L.Ac., O.M.D. — Licensed Acupuncturist

* All professional members and five of the seven public members are appointed by the Governor. Public member # 3 was appointed by the Senate Rules Committee; public member #4 was appointed by the Assembly Speaker.

ISSUE #6. Should the exemption from licensure for employees of industry be expanded for engineers who either contract with, or provide consulting services for, exempt industries?

Recommendation: *The Joint Committee supports an expansion of the exemption. It should be expanded to include not only direct employees and consultants, but also temporary employees, contract employees, and those hired through third-party contracts.*

Board Response:

In November 1996, during hearings before the JLSRC, the Board suggested that the industrial exemption be expanded to include individuals, such as independent contractors, working for industry. Senator Greene, as chair of the JLSRC, sponsored legislation (SB 828/1996) to extend the Board's sunset date by two years and at that time worked closely with DCA to include an expansion to the industrial exemption in his bill.

Unfortunately, the Board was not consulted about the language placed in the bill, and we believe the exemption is too broad. The language in the bill expanded the industrial exemption to include "consultants, temporary employees, contract employees, and those persons hired pursuant to third party contracts." The Board is concerned with how "third party contracts" will be interpreted. The potential harm would be unlicensed persons using the industrial exemption to get around the licensing laws for work not being done for the industrial corporation.

The Board voiced strong concerns about the language, as did professional organizations, but influential support from the software and electronics industries defeated efforts to address those concerns.

The software and electronic industries have committed to work with us to draft language that clarifies the situation to everyone's satisfaction. We are still in the working stages. There is no guarantee that we will agree upon specific language, but all sides are willing to work on a compromise.

ISSUE #7. Should the requirements to take the Engineer-In-Training examination be changed or eliminated?

Recommendation: *The Joint Committee would like further justification for requiring this exam. The benefits of this exam are unclear, as is the necessity of the state mandate. Suggest possibly making the exam advisory for students and potential employers, and no longer a prerequisite for licensure. Would include this issue as part of the review regarding licensure, as previously recommended.*

Board Response:

The Fundamentals of Engineering (FE)/ Engineer-in-Training (EIT) examination is developed and scored by the National Council of Examiners in Engineering and Surveying (NCEES). The comprehensive eight-hour exam tests fundamental engineering knowledge in circuits, fluid mechanics, thermodynamics, solid mechanics, mechanics/statics, materials science, mathematics and chemistry. The four-hour multiple choice morning section covers the fundamentals including

mathematics and the basic sciences. The multiple choice questions in the afternoon session are written to assess depth of knowledge in a selected subject area. Whichever subject area is chosen is strictly for the purpose of the examination and has no influence as to the area of licensed professional practice pursued. It is administered in all states and territories on the same day, twice a year.

In order to take the EIT exam an applicant must have

- completed at least three years of college work in a Board-approved engineering curriculum
- or**
- have had at least three years of engineering-related work experience
- and**
- not have been convicted of a crime substantially related to the practice of engineering or land surveying.

Most students take the FE/EIT examination late in their senior year.

Taking and passing the EIT confers two benefits to California candidates. First, because passing the EIT demonstrates a fundamental knowledge in the area of engineering, EIT certification drastically reduces the number of years of work experience or on-the-job training required before a candidate can sit for the professional engineering exam. Also, many employers prefer to hire people who have passed the EIT, as it measures knowledge of the fundamentals of engineering. Board staff receives many requests for verification of EIT certification from potential employers. The requirements for taking a California professional engineering examination with and without an EIT certificate are set out below:

With an EIT Certificate:

- 1. An ABET*-accredited BS degree and two years of work experience,
- or 2. a non-ABET*-accredited BS degree and four years of work experience
- or 3. an ABET*-accredited BS and MS or Ph.D. degree from an ABET-accredited program and one year of work experience
- or 4. six years work experience

Without an EIT Certificate:

- 1. a non-ABET*-accredited BS degree and 17 years of work experience,
- or 2. an ABET*-accredited BS degree and 15 years of work experience
- or 3. an ABET*-accredited BS degree, an MS degree from an ABET-accredited program, and 14 years of experience
- or 4. an ABET*-accredited BS degree, a Ph.D. degree from an ABET-accredited program, and six years of experience (effective until 2/2000).

* ABET: Accreditation Board for Engineering Technology

The second benefit of EIT certification is that 24 state boards require passage of the eight-hour EIT exam and the eight-hour principles and practice exam for comity registration. Those 24

boards will not waive the EIT requirement. Without the EIT exams, no California-licensed professional engineer could be registered through comity in those jurisdictions.

For the above reasons, we do not recommend that the requirements for the Engineer-In-Training examination (EIT) be changed or eliminated.

ISSUE #8. Should a separate California “Seismic Principles” examination be required for all engineering disciplines, or should it be combined with national examinations for specified engineering disciplines?

Recommendation: *The current “Seismic Principles” examination, required for civil engineers, should be reviewed to assure that it is only testing for those seismic design principles which are critical to practice in California and to determine if other disciplines identified by the Seismic Safety Commission should be examined. There should also be consideration made to combining this exam with the national exam.*

Board Response:

In its 1995 Report on the Northridge Earthquake, the Seismic Safety Commission (SSC) made recommendations on seismic safety planning for California, including the recommendation that the governor direct that California’s codes and regulations be amended to improve the way the licensing boards, including the Contractors State Licensing Board, the Board of Architectural Examiners, and the Board of Registration for Engineers and Land Surveyors, test their licensees on seismic principles.

We have been responding to the SSC request. The seismic principles test plan was updated in 1996 to include the SSC recommendations. While all of California's engineering and land surveying test plans are regularly updated to reflect changes in practice, knowledge, new methodologies, and new laws; this update paid special attention to the SSC report and the lessons learned from the Northridge earthquake.

There is no national seismic safety examination. Because California is a seismically active state, it is important for the protection of the public that California engineers are at least minimally competent in seismic design principles.

Examinations are intended to prevent anyone who does not meet minimum standards from practicing professions in which the consequences of incompetency have public safety repercussions. Besides protecting public safety directly by screening out engineers who are not minimally competent, increased seismic testing requirements have the additional benefit to California consumers of encouraging potential engineers to study seismic principles and encouraging engineering schools to continue their research and to teach the most recent information to their students.

Following the SSC Northridge report, the Board asked the Electrical Engineering Technical Advisory Committee (EE TAC) and the Mechanical Engineering Technical Advisory Committee (ME TAC) to discuss the addition of seismic issues to the mechanical and electrical

engineering examinations. While the TAC members think such examinations would be valuable, and the Board, as stated in Issue #1, recommends extension of the examinations to mechanical and electrical engineers, funding must be authorized by the legislature before examinations can be developed. In order to educate the current population of electrical and mechanical engineers, members of the Technical Advisory Committees have decided to prepare a series of articles for the Board's newsletter about potential seismic issues and how to avoid equipment failure or destruction of equipment during an earthquake.

ISSUE #9. Should the “Engineering Surveying” examination required for civil engineering candidates be changed or eliminated?

Recommendation: *Further justification for requiring this examination is necessary. The benefits of this exam are unclear, as is the necessity of the state mandate. Recommend that include this issue as part of the review regarding licensure, as previously recommended.*

Board Response:

To ensure the proper design and layout of civil engineering fixed works, a civil engineer may perform topographic and construction layout surveys. Most civil engineering plans include both topographical information and construction design layout tasks. In addition, the practice of civil engineering includes grading, which involves setting elevations.

The legislation requiring civil engineers to be examined in engineering surveying was adopted in 1985 as a compromise between civil engineering and land surveying professionals. Prior to 1982, all civil engineers were authorized to practice all aspects of land surveying. Land surveying professionals argued that civil engineers are not educated or examined in all aspects of land surveying and therefore have not demonstrated competency in the profession.

The California Engineering Surveying examination is based upon occupational analyses, which are used to develop a test plan that will evaluate whether or not a civil engineer is technically competent to perform the surveying work required by civil engineering design tasks. Since all civil engineers are able to practice in an area that may include topographic surveys, construction design layout, or grading, it is appropriate that they show proficiency in that area. The engineering survey exam is designed to demonstrate that proficiency.

The JLSRC commented that the passage rate for the engineering surveying exam has varied substantially from one year to the next and suggested this indicates inconsistency in scoring the examination. Passage rates of the examinations fluctuate from year to year because both the examination questions and the population being examined are different each year. While the questions are equivalent, it is not always possible for each item to be equally difficult. The difference in the cut score takes this into account. Grading methods are consistent from year to year. The examinations are rewritten for exam security reasons and, when necessary, to include new information. Exams are developed by an outside vendor, not the Department's Office of Examination Resources.

We recommend that civil engineers continue to be examined in engineering surveying.

ISSUE #10. Should the Board eliminate the current California examination for “Structural” (Civil) Engineers and instead utilize the national examination?

Recommendation: *Further justification for requiring a California examination for structural engineers, rather than utilizing the national examination, is necessary. Recommend that the Board include this issue as part of the review regarding licensure, as previously recommended.*

Board Response:

In response to the JLSRC questions and comments about the California structural engineering exam, the Board appointed a subcommittee to evaluate possible use of the current NCEES Structural Engineering examinations in conjunction with a modified California-specific structural engineering exam. The subcommittee assessed the California structural engineering examination and the NCEES structural engineering examinations. It also considered improvements to the NCEES exam that would be necessary for California to use it, with the addition of California-specific seismic questions for the areas relating to hospitals and public schools, for licensing purposes.

The subcommittee held three meetings where speakers from various professional societies and NCEES made presentations. The subcommittee focused on the 16-hour California Structural Engineering Examination and the NCEES Structural I and II Examinations. The review and evaluation found:

- The NCEES Structural I exam is an entry level exam, not suitable for licensing purposes.
- The California structural exam is a mastery-level exam. Candidates must have three years of experience as a registered civil engineer.
- The quality of the NCEES exams is not as high as the California exams. NCEES test items are not developed under controlled conditions in a secured location with a test-development specialist, while California test item development meets those criteria.
- The California structural exam is specifically tailored for the state's seismic conditions.
- The passage rate is higher for the California exam. The average pass rate over the past five years for the California exam is 24%. Over the same five-year period, the average pass rate for the NCEES Structural I (entry-level) was 25% and for the Structural II, 22%.
- It is more cost effective for candidates to take the California exam. Candidates must pay \$175 to take California's exam. Candidates pay \$85 to take the NCEES Structural I and \$145 to take the NCEES Structural II for a total of \$230. The candidate cost for the NCEES Structural II exam will increase to \$295 in 1999, for a total of \$380.

Other fundamental differences between the California and NCEES exams are summarized in the following tables.

The subcommittee recommended continued use of the California Structural Engineering Examination, using the 1998 development process and annual evaluation. The California exam best addresses the state's special seismic requirements and is compliant with Title 24 (California Building Code) and the state's health and safety codes.

Further, the subcommittee recommended that the Board's structural engineering member monitor and participate with NCEES in exam development and encourage other California structural engineers to participate. NCEES is changing its examination development process. We hope that during the transition, we can coordinate with NCEES to develop an acceptable structural engineering exam. NCEES has acknowledged that existing and future exams must require more knowledge-based and higher cognitive-level questions to meet the requirements of states using the exams for licensure and registration purposes.

CA STRUCTURAL EXAM	NCEES STRUCTURAL II EXAM
New test plan adopted in July 1997	Test plan completed in 1980, updated in 87, 88, 89.
16 hour examination	8 hour examination
The exam development committee composition reflects California's population of structural engineers in practice, age, sex, ethnicity, etc. Item writers meet with exam specialists for calibration and training. Questions developed in a controlled environment; items written and linked to test plan specifications.	Volunteers are recruited from participating states and serve for many years. Item writers receive a matrix and manual developed for them in the mail. Items writers are assigned a subject and questions are developed at item writer's location, then mailed to NCEES.
Office of Examination Resources optically scans answer sheets, does item analysis, produces final scores. Statistical analysis of item quality.	NCEES scans the answer sheets and produces final scores.
Criterion-based grading and standard setting.	Pass/Fail grading.
Many data points collected to ascertain candidate's competency.	Very few elements or data points collected to ascertain candidates' competency.
Multiple-choice items together with essay items. Each essay item has separate elements to be evaluated (method, answer, reference, etc.)	One problem in the A.M., one problem in the P.M.
Many opportunities for candidate to demonstrate minimum competency.	One opportunity to pass or fail, candidates can make one fatal error and fail exam.
Superior graphics content and more notations.	Passable, elementary, or inadequate graphics.
Problem complexity high, requires high level of knowledge of engineering concepts to solve problems.	Problems have low level of complexity and there is limited testing of advanced engineering concepts.

Mastery level exam (candidates must have three years experience as registered civil engineer)	Entry level applicants may take the exam.
Covers Title 24, California Building Code (Uniform Building Code) as well as amendments incorporated at recommendation of the State Architect and the Office of Statewide Health Planning and Design.	Does not cover Title 24 (California Building Code). Uses three codes: Uniform Building Code, National Building Code, and Standard Building Code.
Covers all four common building materials: steel, concrete, wood, and masonry.	Contains only two test questions and does not cover all four materials.
Covers school and hospital problems, no bridge problems, in accordance with the new examination test plan and California Building Code.	Contains bridge problems, but no school or hospital problems. Not compliant with California practice.

ISSUE #11. Should the Board perform a task analysis on the California Professional Land Surveyors examination, and utilize the (national) NCEES Professional Land Surveyors examination, along with the California-specific examination, in order to provide land surveyors comity with other states?

Recommendation: *The Board should utilize the NCEES examination for land surveyors and only use a California-specific examination which tests in those areas which are essential to practice in California.*

Board Response:

In mid-1997, in response to the comments of the JLSRC, the Board established a subcommittee on land surveyor exams to explore whether California should consider using the National Council of Examiners for Engineering and Surveying (NCEES) exam, continue to use our own exam, or use the NCEES exam in conjunction with the California exam.

The subcommittee held three meetings to study and evaluate the NCEES exam's suitability for California. It determined that the current NCEES exam does not adequately address California's needs for the following reasons:

- The NCEES examination is an entry-level exam similar to the land surveyor in training (LSIT) exam and is not suitable for licensing land surveyors in California.
- The current six-hour NCEES exam, based on a 1991 task analysis, is multiple-choice only and includes no essay type questions. There is no demonstration of analytical or communication skills in the NCEES examination.
- The current California exam, which consists of 30 to 40% multiple choice questions and 60 to 70% design (essay type) questions, is based on a 1995 task analysis. It is eight hours in length and tests all of the items required by statute and Board regulations.

- Test items for both NCEES and California are prepared under controlled conditions in a secured locale with test development specialists.
- The NCEES examination is prepared by an Examination for Professional Surveyors (EPS) committee. Only three representatives from California are involved. The preparation, grading, and standard setting for the California exam is done by independent committees ranging in size from eight to 60 professional land surveyors. This provides a sound and continuing check and balance system for the examination.
- Since NCEES cannot include state specific or jurisdictional questions, the exam is limited. State-specific and jurisdictional questions are required for public protection.
 1. California is a public lands state, but there are minimal, rudimentary public lands questions on the NCEES exam.
 2. California has extensive shore and sea boundaries in addition to numerous lakes and rivers boundaries, but there are no California-specific water boundary questions on the NCEES exam.
 3. California has one of the most extensive Subdivision Map Acts of any state, but there are no questions about the Subdivision Map Act on the NCEES exam.
 4. California is subject to extensive earth movements, but the NCEES exam contains no questions relating to the California Coordinate System.
- There is little difference in cost to candidates. The cost to take the NCEES examination has been raised from \$99 to \$150. The cost of California's land surveying exam is \$175.

Therefore, based on the above observations, the Board does not mandate that California candidates take both the 8-hour national exam and an additional state-specific exam. Whereas PLS candidates in other states must take the national exam **and** a state-specific exam, the Board requires that California candidates **only** take the state-specific exam. Taking just one exam is more economical for California candidates and still provides the required safeguards to protect California consumers.

NCEES completed a national task analysis in 1997. The task analysis was reviewed and approved by NCEES in August 1998. This new task analysis will be the basis of the October 1999 NCEES exam. It may be possible to utilize the rewritten NCEES multiple-choice examination to replace California's multiple-choice portion of the exam with the addition of a four to six-hour portion of California-prepared design problems to satisfy state-specific needs.

Beginning in October of 1998, NCEES will begin writing its land surveyor-in-training exam on an academic basis. Questions included will be based more on the kinds of technical/scientific instruction obtained in college-level courses. The knowledge base and cognitive value of the principles and practices exam (the professional exam) will also be raised as a result of this change in level on the land-surveyor-in-training exam.

The subcommittee recommended continued monitoring of the NCEES exam to determine when it is acceptable for California. Passage of the NCEES exam would make it easier for a California-registered land surveyor to get comity with many other states, although some states would require passage of a state-specific exam. For example, Texas uses the eight-hour Land

Surveyor-in- Training (LSIT) exam but not the NCEES LS exam; Texas, like California, has its own eight-hour exam. The Board is considering the subcommittee's recommendation that California offer to proctor the NCEES exam for applicants in California who are interested in comity with other states. There would be an additional cost for those applicants. The Board will continue to work with NCEES to improve that exam so it can be considered for future use in California.

Any recommendation on the time needed before a new state-specific exam portion can be adopted for use with the NCEES multiple-choice questions depends on how soon NCEES implements its proposals.

State Specific Exams in Other States

As is mentioned above, most of the other 49 states and territories require their PLS candidates to take a multi-hour state-specific exam in addition to, or instead of, the 8-hour national exam. (Some of the state-specific exams are as short as two hours, and some are as lengthy as another full 8-hour exam.)

California's PLS exam is a state-specific exam; however, it is the only exam required of California candidates. While this causes a problem with comity, it alleviates for California candidates some of the expense of having to take more than one test.

During the last 10 years, the California PLS pass rates have varied greatly. Since 1988, the pass rates has been: 41%, 44%, 30%, 26%, 25%, 15%, 16.9%, 8%, 15%, 23.2%, and 1.9%.

While the board was greatly dismayed at the 8% pass rate in 1995, the Board was tremendously alarmed at the 1.9% pass rate for the April 1998 exam. (This issue is further addressed below.)

The Board conducted a brief survey of the other states and territories, and has received a response from about half of the states. The survey asked for the "...recent pass rate for your State Specific PLS exam which the candidates must take in addition to the NCEES national PLS exam" from 1993 through 1998.

From some of the neighboring states, we have received the following figures [if more than one figure is given per year, then the PLS state specific exam is offered in April and October]:

Percentage of applicants passing PLS state-specific exam each year.

State	1993	1994	1995	1996	1997	1998
Washington	31	16.1	32	29	31	26
Nevada	51	50	70	51	55	56
Hawaii	38	13	18	42	48	21

Great fluctuations in the pass rates for state-specific exams is shown by the following states:

Percentage of applicants passing PLS state-specific exam each year.

State	1993	1994	1995	1996	1997	1998
South Carolina	44 / 36	60 / 38	46 / 51	21 / 53	30 / 17	50 /
Kansas	100	25	13	24	30	65

From some of the larger states, we have received the following pass rates for their PLS state specific exams:

Percentage of applicants passing PLS state-specific exam each year.

State	1993	1994	1995	1996	1997	1998
New York	27 / 28	27 / 28	26 / 31	33 / 24	37 / 13	21 /
Louisiana	38	58	62	51	47	38

The Board recognizes that no other state has ever had a pass rate as low as 1.9%, and we wish that the overall pass rate for the last six years was higher. However, statistics show that California candidates, for whatever reason, perform below the national average on the Professional Engineering exams. It is feasible that the same may be true of Professional Land Surveying candidates. We are in the process of conducting an in-depth historical review of all PLS candidates who have taken the California PLS exam during the last five years. For example, we are looking into the education and number of years of experience which were completed by the candidates who sat for the exam.

The April 1998 Exam

The Board has some serious concerns regarding the April 1998 PLS exam. The Board notes the low level of the “cut score” and the corresponding low passing rate on this year’s exam, together with the downward trend of both values over the past five years. The Board believes that this is due either to a serious flaw in the examination itself, serious deficiencies within the candidate pool, a significant change in the practice of land surveying in general, or a combination of these factors.

The exam team has reviewed the exam as a whole, and they compared the April 1998 exam to the exams from the previous two years. They found that all three exams were comparable in terms of test plan coverage, difficulty, and fairness. In addition, the exam was reviewed by the Board and a committee of professional land surveyors for the same characteristics.

The Department's Office of Exam Resources (OER) has not been involved with the Land Surveyor examination for a variety of reasons. Service provided by OER has not been consistent, depending upon the particular staff assigned. In the past, the Board cancelled an OER contract over delays caused when OER staff was required to consult with OER management before being able to make a decision, meetings held when participants were unprepared and/or had not completed appropriate research for a given examination, or failure on the part of OER staff to listen to subject matter experts and Board staff about examination requirements specific to land surveyors and/or engineers. For this reason, the Board chose to contract with private vendors for what has proven to be better, more responsive service.

The Board believes that the exam process, in terms of content, difficulty, and fairness is sound and completely defensible to the surveying community. Nevertheless, at its September 1998 meeting, the Board began to develop actions to address these outstanding issues. One of the first steps will be to coordinate focus-outreach meetings to the college students and professors (as well as candidates who are not enrolled in college) and outreach to the professional community, exam psychometricians, candidates from the April 1998 exam, and employers.

ISSUE #12. Should the six year experience requirement for licensure be increased to eight years as recommended by the Board?

Recommendation: *The Board must demonstrate how an increase in two years of experience will enhance consumer protection. Should include this issue as part of the review regarding licensure, as previously recommended.*

Board Response:

All of the other 49 states, and all of the U.S. territories, require eight years experience to be eligible to take a professional engineering examination. The eight year requirement is a national standard which California does not meet; we allow registration with only six years experience.

We still believe that the change from six years to eight years is necessary and reasonable. As engineering becomes more technologically demanding, schools have backed away from teaching some of the practice oriented issues, such as contracts and specifications, and ethics.

Additionally, it appears that California pass rates are lower than pass rates in the other states; we are compiling a comparison of California results to national results.

The Board does not have the authority, by regulation, to address the issue of increasing the experience requirement; a statutory change would be required. Staff is currently gathering data to see why California examinees are performing poorly before the Board pursues such legislation. In the past, opposition to such an increase has come from Professional Engineers in California Government because state employee promotions are based on registration.

ISSUE #13. Should there be a continuing education requirement for all engineers, prior to renewal of a license, as recommended by the Board?

Recommendation: *Joint Committee believes that all proposals to implement continuing education requirements, as a prerequisite for licensure renewal, should demonstrate that the mandate will improve licensee competency and will have a measurable impact on consumer protection. Do not believe that the Board has provided sufficient justification for adopting a continuing education requirement for all engineers. No recommendation at this time.*

Board Response:

DCA staff and the JLSRC staff have indicated that continuing education is not working for those disciplines which require it. Therefore, the Board dropped this from the PE Rewrite legislation. We have found that continuing education is an effective means of rehabilitating practitioners disciplined for negligence or incompetence and will continue to use it in that capacity.

ISSUE #14. Should there be a “retired status” for engineers and land surveyors as recommended by the Board?

Recommendation: *There is no justification at this time for granting a retired status to engineers and land surveyors.*

Board Response:

Many professional engineers and land surveyors have asked how they can retire without simply failing to renew and allowing their licenses to be considered delinquent. The Board proposed regulatory language to allow a licensee to choose a retired/inactive status. The proposed language follows:

Board Rule 466. Retired/Inactive Registration and License.

- (a) The Board hereby establishes an inactive category of licensure for professional engineers and professional land surveyors who are not actively engaged in the practice of their profession. An inactive registration or license issued pursuant to this section shall be designated as a "retired/inactive status" and the registration or license shall be labeled a "retired/inactive registration" or "retired/inactive license."
- (b) The holder of a retired/inactive registration or retired/inactive license pursuant to this section shall not engage in any activity for which an active professional engineer's registration or professional land surveyor's license is required.
- (c) A retired/inactive registration or retired/inactive license shall be renewed during the same time period in which an active registration or license is renewed.
- (d) The renewal fee for a registration or a license in a retired/inactive status shall be forty dollars (\$40).
- (e) A registration or license in a retired/inactive status must be renewed within 30 days after its expiration. If the registration or license is not renewed within 30 days after its expiration, the registration or license shall be placed in a delinquent status subject to delinquent renewal procedures.
- (f) A retired/inactive registration or retired/inactive license shall be issued if the applicant meets the following requirements:
 - (1) Submission of retired/inactive status application form 466 and fee.
 - (2) The applicant is a professional engineer or professional land surveyor registered or licensed in California.
 - (3) The applicant's current or most recent registration or license is not suspended, revoked or otherwise punitively restricted by the Board or subject to disciplinary action.
 - (4) The applicant is not delinquent in the payment of the renewal fees for any registration issued under the Professional Engineers Act or any license issued under the Professional Land Surveyors Act. This requirement does not apply to applicants who are delinquent prior to December 31, 1998.
- (g) In order for the holder of a retired/inactive registration or retired/inactive license issued pursuant to this section to restore his or her registration or license to an active status the retired/inactive registrant or licensee shall complete and pass the appropriate examination(s) for the type of registration or license previously held in an active status, and shall pay the required registration or license renewal fee.

The Office of Administrative Law rejected the language for reasons including lack of fiscal data connecting the fee with the Board's actual cost to issue the retired/inactive license and inconsistency with the enabling statutes concerning reinstatement of a retired/inactive license. The Board has decided to model new language after the Pharmacy Board's existing statutory language for retired pharmacists. That language follows:

Business and Professions Code Section 4200.5.

- (a) The board shall issue, upon application and payment of the fee established by Section 4400, and upon receipt of the applicant's wall certificate, a retired license to a pharmacist who has been licensed by the board for 20 years or longer, and who holds a license that is current and capable of being renewed pursuant to Section 4401, that is not suspended, revoked, or otherwise disciplined, or subject to pending discipline, under this chapter.

- (b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active pharmacist's license is required. A pharmacist holding a retired license shall be permitted to use the titles "retired pharmacist" or "pharmacist, retired."
- (c) The holder of a retired license shall not be required to renew that license.
- (d) In order for the holder of a retired license issued pursuant to this section to restore his or her license to active status, he or she shall pass the examination that is required for initial licensure with the board.

ISSUE #15. Should the Board be granted legislative authority to define in regulations a code of professional practice?

Recommendation: *The Board should only be granted this new authority after language has been reviewed by the Joint Committee. Recommend that include this issue as part of the review regarding licensure, as previously recommended.*

Board Response:

Currently, the Board is not seeking the legislative authority which would enable it to adopt, by regulation, a Code of Professional Practice. Existing law authorizes disciplinary action for fraud, deceit, misrepresentation, negligence, incompetence, breach of contract, and aiding/abetting another to violate the law. The Board is currently discussing this issue due to recent indications from the Attorney General's Office that such authority would be beneficial.

PART 3.

Board for Professional Engineers and Land Surveyors

1999 SUPPLEMENT TO THE BOARD'S 1998 SUNSET REVIEW REPORT

This supplement to the Board for Professional Engineers and Land Surveyors' 1998 Sunset Review Report updates the statistics and supporting information in the 1998 report. The Sunset Report is also published on the Board's web page at <http://www/dca.ca.gov/pels>. It has been updated to reflect the 1999 changes.

The following text discusses some of the issues the Board has addressed since the 1998 report was prepared, therefore, no page number referrals are given.

Budget Update

The Board projects its fund reserve will experience a deficit in FY 2001/02. During the last ten years, the Board has not raised its licensing and examination fees to keep up with increased costs. From FY 1994/95 to FY 1997/98, the Board also experienced an average yearly decline in application fee revenue of ten percent or \$221,000 per fiscal year. Expenditure cuts and savings plans have been instituted to keep up with increased costs. The Board is now in the process of preparing fee increase legislation to be introduced in the year 2000. If this legislation is enacted and becomes effective January 1, 2001 and the necessary regulation changes are approved, the Board fund will experience a revenue increase in FY 2001/02 to bring it to at least a three-month reserve.

Board Policy Resolutions

In early 1995, the Board for Professional Engineers and Land Surveyors decided to formalize its opinions and policies on various aspects of the Professional Engineers Act, the Professional Land Surveyors' Act, and the Board Regulations, as well as on its own internal management policies, as "Board Policy Resolutions." Before issuing these policy resolutions, the Board's attorneys researched the matter to determine if the Board could do so without adopting the opinions as formal and binding regulations. Based for the most part on the holdings in Skyline Homes, Inc. v. Department of Industrial Relations [(1985) 165 Cal.App.3d 239], the Board's attorneys opined that policy resolutions would not need to be adopted as formal and binding regulations as long as they (1) are not intended to amend, supplement, or revise any express statute or regulation concerning professionals subject to licensure by the Board; (2) are merely restatements of existing law and are intended only for clarification; (3) are not intended to implement, interpret, or make specific the law enforced or administered by the Board; and (4) are not intended to govern the Board's procedures.

The intent of the Board in issuing policy resolutions was to provide answers to commonly asked questions about existing statutes, regulations, and procedures. The Board did not intend for the policy resolutions to be treated as “new laws” or to be viewed as binding opinions. They were simply to be restatements of existing laws or the only legally tenable statement of law. Unfortunately, members of the professions, consumers, and governmental agencies did not accept them as such and began to treat the policy resolutions as binding laws which would be enforced by the Board. When the Board realized this was happening, it directed its attorneys to again look into the issue of policy resolutions and whether they needed to be adopted as regulations.

While the Board’s attorney was researching this issue, the Office of Administrative Law (OAL) issued a determination that the specific subject covered by one policy resolution constituted an underground regulation. It is important to note that OAL did NOT address the general issue of whether policy resolutions are underground regulations; OAL only addressed the specific subject of the policy resolution on the Fields of Expertise between Civil Engineers and Geologists.

The Board’s attorney has recently advised the Board that a 1996 California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4th 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations. Based on this new ruling, the Board’s attorney advised the Board to review all of its existing policy resolutions to determine which ones should be adopted as formal and binding regulations, which ones were no longer necessary, and which ones would still meet the newly narrowed instances in which a regulation would not be needed. The Board directed staff and its attorneys to begin this review and provide recommendations to the Board. The recommendations were made at its September 1999 meeting, when the Board voted to withdraw nine policy resolutions, in addition to two previously withdrawn.

These policy resolutions were withdrawn because the topics addressed are no longer at issue, have already been addressed in regulation or statute, or need to be adopted as a regulation. The remaining eleven are still being reviewed by the Board’s attorneys for discussion at the November and December meetings.

Enforcement

The Enforcement Unit staff processed 195 complaints, issued 8 letters of warning and held 5 informal hearings. The Board also issued ten citations and processed two criminal actions. Restitution in the amount of \$24,525 was ordered returned to consumers. Information on Board disciplinary actions is now on the Internet.

Outreach

The Board has two forms of outreach. The college outreach program provides information regarding initial licensing and examination issues to college students and professors. Board staff attended college outreach meetings at fifteen California campuses, speaking to more than 500 students.

The enforcement outreach program addresses practice-related issues, the complaint process, laws, and regulations. Staff members have made presentations to over twenty city and/or county government agencies and various professional society members about engineering and land surveying issues. Attendees of enforcement outreach presentations receive a packet of information including a copy of the Board's laws and rules publication, the *Consumer Guide to Engineering and Land Surveying*, and the *Guide to Engineering and Land Surveying for City and County Officials*. In the event of a natural disaster, Board staff is always prepared to speak to groups affected; in 1999 there was one flood forum where consumers were able to find out how to locate and hire a licensed engineer or land surveyor to help them deal with the effects of flooding.

Retired Status

In 1999 the Board proposed legislation creating a retired status. The language was included in the Senate Business and Profession Committee's omnibus bill, Senate Bill 1307. The bill passed both houses and was sent to enrollment on September 22, 1999.

Y2K Compliance

The Board has been active in diagnosing and remediating year 2000 (Y2K) concerns. Several databases were analyzed and tested and all proved to be compliant. The telephone systems, the heating and air conditioning systems, and various other pieces of equipment were identified as essential, and testing indicated all are Y2K compliant.

Consumer Information on the Internet

This Spring the Board's licensee lookup site was added to the website. Consumers are now able to verify information about licensees directly, rather than calling or writing to the Board. The website also includes the Board's laws and rules, Board meeting agendas and minutes, the Consumer Guide, reports of disciplinary actions, information on how to file a complaint, the complaint form, the Plain Language Pamphlet, examination schedules, and exam statistics. Many people filing complaints with the Board have indicated that they have obtained information on the complaint process and copies of the complaint forms from the Internet. In addition, people with questions concerning Board laws and functions now have a direct link to request information from staff via the e-mail addresses provided on the website.

Licensing and Examinations

This year the Board updated the test plan for the traffic engineering examination and is planning to update the land surveying, structural, geotechnical and special civil engineering exams within the next two years. The Board administered 16,227 examinations during FY 98/99.

The 1998 professional land surveyor examination had a 1.9% pass rate. This year, the Board convened a focus group to identify any and all factors that contributed to the low pass rate. The group included college professors of land surveying, representatives of professional land surveyor organizations, recently licensed land surveyors, and individuals who failed the 1998

exam. An independent facilitator conducted the meeting and acted as a buffer between the various groups.

During the discussions, the group reached three main conclusions:

- 1) It appeared that the examination was fair and covered appropriate entry-level questions.
- 2) The candidates appeared to be deficient in either education or broad-based experience.
- 3) It appeared that more time should be allowed to complete the examination in the future.

The Board responded to the third issue by adding more time to the 1999 exam. Candidates and professional societies were notified of the change through the Board's regular communications and outreach programs. The pass rate for the land surveyors examination rose from 1.9% (nine individuals) in 1998, to 14.4% (84 individuals) in 1999. The Board is continuing to evaluate the Land Surveyor exam and the education and experience requirements. For more information, see p. 9 and p. 60 of the 1998 Report.

Licensing Data

At the end of Fiscal Year 1998/99, there were approximately 86,273 active engineering licenses and 3,801 active land surveying licenses. Although the **total** licensee population has remained constant, the **title act** licensee population has declined by 14% between FY 1995/96 to FY 1998/99. Most notably, Industrial Engineering has decreased by 27%.

Table 1, on the following page, provides licensing data for the past four years.

Table 1 - Licensing Data – 1999 UPDATE

LICENSING DATA		FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Registered Licensees (Type)*		Total: 89,995	Total: 91,045	Total: 90,205	Total: 90,074
Civil		40,799	41,510	41,869	42,733
Geotechnical		1,147	1,259	1,168	1,184
Structural		3,070	3,029	3,101	3,175
Electrical		8,106	8,351	8,324	8,160
Mechanical		15,048	15,249	15,373	15,487
Land Surveyor		3,776	3,704	3,809	3,801
Title Acts	Agricultural	354	341	309	309
	Chemical	2,275	2,306	2,116	2,128
	Control System	2,931	2,902	2,686	2,448
	Corrosion	631	632	516	521
	Fire Protection	944	957	868	866
	Industrial	1,176	1,179	1,174	861
	Manufacturing	1,942	1,915	1,825	1,576
	Metallurgical	574	581	577	573
	Nuclear	1,302	1,283	1,081	1,086
	Petroleum	533	534	543	544
	Quality	2,455	2,407	2,221	1,963
	Safety	1,557	1,526	1,298	1,256
	Traffic	1,335	1,380	1,347	1,403
	**Applications For Exams		Total: 15,100	Total: 14,360	Total: 12,246
Professional Engineer		7,434	7,744	5,786	6,409
Land Surveyor		691	557	530	608
Structural		371	384	343	334
Geotechnical		103	77	96	93
EIT/LSIT		6,501	5,598	5,491	5,410
***Licenses Issued (Type)		Total: 5,434	Total: 5,945	Total: 4,907	Total: 3,959
Civil		1,422	1,807	1,292	954
Geotechnical		42	30	32	23
Structural		56	80	106	77
Electrical		211	294	281	178
Mechanical		461	295	456	242
Land Surveyor		60	106	124	9
Agricultural		2	3	2	1
Chemical		75	40	63	27
Control Systems		18	10	14	16
Corrosion (eliminated 1/1/99)		6	7	3	7
Fire Protection		26	23	19	26
Industrial		8	1	5	3
Manufacturing		2	1	1	0
Metallurgical		5	1	7	4
Nuclear		0	3	0	3
Petroleum		1	4	13	8
Quality (eliminated 1/1/99)		2	3	2	5
Safety (eliminated 1/1/99)		7	5	4	8
Traffic		27	58	46	52
EIT Certificate		2,868	2,296	2,331	2,124
LSIT Certificate		135	176	97	192
Renewals Issued		Total: 24,875	Total: 24,273	Total: 21,974	Total: 19,295

* Numbers from Teale Status Code Report, July 1st statistics for respective years.

** Numbers from actual cashing statistics.

*** Numbers from manual and automated license-issued log.

Budget Updates

Revenues and Expenditures*- 1999 Supplement

* Figures based upon Calstars Month 13 reports.

REVENUES	ACTUAL				PROJECTED	
	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
App Exam/License Fees	1,973,664	1,788,557	1,599,921	1,676,908	1,719,945	719,945
Renewal Fees	3,606,133	3,457,335	4,215,429	3,088,453	3,056,000	3,125,440
Delinquency Fees	62,410	55,845	53,468	56,434	56,000	56,000
Duplicate License/Cert	3,720	3,510	4,960	3,880	8,000	8,000
Fines (Citations)	-	500	350	0	0	0
Other Misc. Income	22,237	18,559	11,629	27,440	21,000	21,000
Interest	202,813	210,459	225,270	294,677	213,000	142,000
Legal Fees: Reimbursement	-	936,974	-	2,944,252	0	941,000
TOTAL REVENUE	5,870,977	6,471,739	6,111,027	8,092,044	5,073,945	6,013,385
OTHER REIMBURSEMENTS	39,453	53,453	34,335	73,753	16,000	16,000
TOTAL RECEIPTS	\$ 5,910,430	\$ 6,525,192	\$ 6,145,362	\$ 8,165,797	\$ 5,089,945	\$ 6,029,385

EXPENDITURES	FY 95-96	FY 96-97	FY 97-98	FY 98-99	PROJECTED	
					FY 99-00	FY 00-01
Personnel Services	2,308,690	2,226,095	2,302,850	2,129,709	2,323,624	2,427,430
Operating Expenses	3,732,195	4,202,648	4,053,375	4,825,267	4,728,889	5,128,889
TOTAL OE & E AND PS	6,040,885	6,428,743	6,356,225	6,954,976	7,052,513	7,556,319
(-) Reimbursements***	<39,543>	<53,453>	<34,335>	<16,000>	<16,000>	<16,000>
(-) Distributed Costs:						
Central Admin ProRata	<176,700>	<133,279>	<67,901>	<131,824>	<142,370>	<148,065>
DCA ProRata	<675,939>	<713,122>	<685,072>	<672,406>	<726,128>	<755,246>
TOTALS				\$6,134,746	\$6,167,945	\$ 6,637,008

*** Reimbursement expenditure authority is \$16,000.

Expenditures by Program Component – 1999 Supplement

EXPENDITURES BY PROGRAM COMPONENT	FY 95-96	FY 96-97	FY 97-98	FY 98-99	Average % Spent by Program
Examinations	3,400,428	3,535,808	3,877,296	3,616,588	56%
Enforcement	1,871,782	2,442,923	2,097,555	2,781,990	36%
Licensing	768,675	450,012	381,374	556,398	8%
TOTALS	6,040,885	6,428,743	6,356,225	6,954,976	

Analysis of Fund Condition – 1999 Supplement

ANALYSIS OF FUND CONDITION	Actual			Projected		
	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02
Beginning Reserve, July 1	2,816,176	3,100,673	3,122,969	4,251,697	2,150,129	227,195
Prior Year Adjustments	188,827	239,529	(71,471)			
Total Adjusted Reserves	3,005,003	3,340,202	3,051,498	4,251,697	2,150,129	227,195
Revenue						
License Fees*	5,324,305	5,885,757	4,853,115	4,944,945	4,930,385	6,000,000
Reimbursements	53,454	34,335	73,753	16,000	16,000	16,000
Interest**	210,459	225,270	294,678	213,000	142,000	0
Legal Fee Reimbursement	936,974		2,944,252		941,000	
Land Surveyor Regulations					(35,000)	(35,000)
SB 1307, 1999, Retired Status					(123,000)	(75,000)
AB 969, Chap. 59, 1997			(10,000)	(10,000)	(10,000)	(10,000)
Total Rev. & Transfers	6,525,192	6,145,362	8,155,798	5,163,945	5,861,385	5,896,000
Total Resources	9,530,195	9,485,564	11,207,296	9,415,642	8,011,514	6,123,195
Expenditures						
Budget Expenditure***	6,428,743	6,356,225	6,954,976	7,052,513	7,556,319	7,556,319
Y2K (Year 2000 Upgrades)		754	623	408,000		
Integrated Consumer Protection System					219,000	
BCP - State Comp. Ins. Fund				5,000	9,000	9,000
Board of Control Claim		5,616				
Late Chg. - State Controller	779					
Board Savings				(200,000)		
Total Expenditures	6,429,522	6,362,595	6,955,599	7,265,513	7,784,319	7,565,319
Reserve, June 30	3,100,673	3,122,969	4,251,697	2,150,129	227,195	(1,442,124)
MONTHS IN RESERVE	5.8	5.4	7.3	3.6	0.4	(2.3)

* Fluctuations occur because renewals are on four-year cycle.

** Interest earned at 5.60%

*** Budget Increase by 0%

Note: The Board projects its fund reserve will experience a deficit in FY 2001/02. During the last ten years, the Board has not raised its licensing and examination fees to keep up with increased costs. From FY 1994/95 to FY 1997/98, the Board also experienced an average yearly decline in application fee revenue of ten percent or \$221,000 per fiscal year. Expenditure cuts and savings plans have been instituted to keep up with increased costs. The Board is now in the process of preparing fee increase legislation to be introduced in the year 2000. If this legislation is enacted and becomes effective January 1, 2001 and the necessary regulation changes are approved, the Board fund will experience a revenue increase in FY 2001/02 to bring it to at least a three-month reserve.

Enforcement Activity – 1999 Supplement

ENFORCEMENT DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Telephone Workload	Total: 12,263	Total: 24,397*	Total: 16,381*	Total: 30,962
Complaints Opened (by Source)	Total: 279	Total: 325	Total: 245	Total: 195
Public (consumer)	159	99	92	110
Licensees	12	30	23	14
Other (gov't agency, Board)	118	196	130	56
Complaints Opened (By Type) **				
Unlicensed Activity	83	49	36	62
Competence/Negligence	124	143	155	85
Contractual	18	2	7	12
Fraud	19	1	7	3
Other	3	29	6	4
Record of Survey	25		71	25
Examination Subversion	43		35	30
Complaints Closed	Total: 271	Total: 330	Total: 223	Total: 166
Complaints Pending	Total: 133	Total: 123	Total: 142	Total: 171
Complaints Submitted to the Division of Investigation (DOI) (subset of Complaints Pending)	Total: 30	Total: 23	Total: 20	Total: 15
Compliance Actions	Total: 35	Total: 30	Total: 25	Total: 42
Final Citation - Order of Abatement	3	3	6	3
Final Citation – Order to Pay Fine	0	1	2	3
Cease & Desist/Warning	29	23	15	31
Mediated	3	3	2	5
Referred for Criminal Action ****	Total: 13	Total: 11	Total: 5	Total: 4
Referred to AG's Office *****	24	23	22	24
Accusations Filed	23	22	19	19
Accusations Withdrawn after Filing	2	1	2	0
Accusations Dismissed	1	1	1	1
Stipulated Settlements	Total: 15	Total: 10	Total: 8	Total: 11
Disciplinary Actions	Total: 23	Total: 18	Total: 16	Total: 15
Probation	14	11	9	9
License Suspension Only	2	0	2	0
License Revocation/Surrender	5	7	5	6
Other *****	2	0	0	0

* Telephone Workload: This represents the number of incoming and outgoing telephone calls. FY 96/97 total does not include information from 10/96 and 11/96 due to a computer malfunction; FY 97/98 total does not include 8/97 through 1/98 due to a computer malfunction.

** Complaints can be opened under more than one "type"; therefore, adding up the various types under "Complaints Opened (By Type)" will result in an erroneous "total."

*** The Board received the authority to issue citations in FY 95/96.

**** "Referred for Criminal Action" indicates those complaints submitted to the District Attorney's Office for the filing of criminal charges; it does not indicate whether or not the District Attorney actually filed charges.

***** "Referred to AG's Office" includes the number of cases submitted to the AG's Office for either the filing of an Accusation or a Petition to Revoke Probation; the term "Accusations" as used in this section also includes Petitions to Revoke Probation.

***** In two separate cases, the Board accepted the surrender of the Civil Engineer registration which authorized the practice of land surveying and issued a new Civil Engineer registration which did not authorize the practice of land surveying.

Enforcement Program Overview

NUMBER OF COMPLAINTS OPENED, COMPLAINTS CLOSED, COMPLAINTS PENDING, COMPLAINTS REFERRED TO THE DIVISION OF INVESTIGATION, ACCUSATIONS FILED, AND DISCIPLINARY ACTIONS TAKEN				
	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Complaints Opened	279	325	245	195
Complaints Closed	271	330	223	166
Complaints Pending	133	123	142	171
Complaints Submitted to the Division of Investigation (subset of Complaints Pending)	30	23	20	15
Accusations Filed	23	22	19	19
Disciplinary Actions	23	18	16	15

Note: It is rare that a complaint will be opened, submitted to DOI, closed, have an accusation filed, and have disciplinary action taken all in the same fiscal year.

Case Aging Data

AGING OF PENDING COMPLAINT INVESTIGATION CASES (includes time at DOI and expert, if applicable)				
NUMBER OF PENDING CASES BY AGE	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
1-30 days	19	20	14	15
31-60 days	16	17	12	21
61-90 days	27	28	24	18
91-120 days	17	6	14	7
121-180 days	10	10	16	16
181-270 days	18	21	42	21
271-365 days	24	11	13	19
Over 365 days	2	10	7	54
TOTAL: PENDING CASES	133	123	142	171
PERCENT 180+ DAYS	33%	34%	44%	55%
PERCENT 365+ DAYS	2%	8%	5%	32%

AVERAGE AGE OF PENDING COMPLAINT INVESTIGATION CASES (includes time at DOI and expert, if applicable)				
	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
AVERAGE AGE OF PENDING CASES IN DAYS	139	140	167	267

AGING OF CASES AT THE ATTORNEY GENERAL'S OFFICE								
	FY 1995/96		FY 1996/97		FY 1997/98		FY 1998/99	
Pre/Post Accusation Filing *	Pre	Post	Pre	Post	Pre	Post	Pre	Post
0-91 days	5	7	7	5	3	7	4	6
92-182 days	6	1	3	7	1	3	2	5
183-274 days	3	4	0	1	5	1	0	2
275-365 days	0	1	0	5	2	3	2	0
1-2 years	1	2	1	0	1	4	2	6
2-3 years	1	2	0	1	0	0	0	2
Over 3 years	0	0	0	1	0	0	0	1

* Pre-Accusation is calculated based on the date the case is submitted to the AG's Office to June 30 (the end of the fiscal year). Post-Accusation is calculated from the date the Accusation is filed to June 30 (the end of the fiscal year).

Citations and Fines

CITATIONS AND FINES	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Final Citations - Order of Abatement	3	3	6	3
Final Citations - Order to Pay Fine	0	1	2	3
Amount Assessed	N/A	\$500.00	\$350.00	\$1,250.00
Reduced, Withdrawn, Dismissed	0	0	1	0
Amount Collected	N/A	\$500.00	\$350.00	\$0.00

The Board received the authority to issue citations in FY 95/96.

Enforcement Expenditures

EXPENDITURE CATEGORY	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Attorney General	\$278,894	\$220,702	\$283,375	\$266,558
Office of Admin.Hearings	67,807	24,776	66,595	66,547
Evidence/Witness Fees	108,878	87,413	90,308	72,217
Division of Investigation (DOI) – Investigative Services *	58,997	3,406	15,121	206
TOTAL	\$514,576	\$336,297	\$455,399	\$405,528

* DOI is budgeted and billed as pro-rata. The total year-end expenditures equal the total budgeted amount. For example, if we over-expend the budgeted amount in one year, the budgeted amount in the next year is increased to cover the previous year's expenditures.

Cost Recovery Efforts

COST RECOVERY DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Potential Decisions *	24	19	16	16
Decisions Ordering Costs *	13	11	10	8
Amount Requested **	\$63,147	\$75,630	\$58,377	\$102,312
Amount Ordered **	\$46,935	\$59,249	\$34,069	\$74,457
Amount Collected ***	\$28,938	\$22,050	\$20,562	\$5,581

* “Potential Decisions” are those decisions issued by the Board in administrative disciplinary matters in which cost recovery was requested initially. Cost recovery is not ordered in Default Decisions or when the Accusation is dismissed. Additionally, the Board usually waives recovery of its costs when accepting the voluntary surrender of the license. For example, in 96/97 there were five defaults, one dismissal, and two voluntary surrenders. Cost recovery was not ordered in these cases.

** The difference between amount requested and amount ordered is the amount not ordered by the Administrative Law Judges (ALJs). In ordering recovery of the Board’s costs in a Proposed Decision, the ALJs determine the “reasonable” amount of the costs. There are no guidelines to follow in determining what constitutes “reasonable”; therefore, the ALJs vary widely on what is considered “reasonable.”

*** If reimbursement of the Board’s investigative and enforcement costs is ordered as a condition of probation, the subject is given a period of time in which to pay or is allowed to make payments. However, if the subject fails to pay in the time required, it is considered a violation of the probationary order. If the Board orders the probation terminated, all of the conditions including the order to pay reimbursement are also terminated. In some cases, rather than terminate the probationary order, the Board will allow the subject additional time to pay. Additionally, if reimbursement is ordered in a decision which orders the revocation of the subject’s license, the reimbursement must only be paid if the license is reinstated. The difference between the amount ordered and the amount collected can be explained as follows:

FY 95/96:	\$4,000, failed to pay, probation terminated
	\$5,208, must pay if reinstated
	\$8,790, failed to pay in time required, re-ordered to pay in FY 97/98
FY 96/97	\$37,194, allowed to make payments
FY 97/98	\$7,444, must pay if reinstated
	\$6,063, allowed to make payments
FY 98/99	\$18,000, must pay if reapply
	\$50,876, allowed to make payments

Restitution to Consumers

RESTITUTION DATA	FY 1995/96	FY 1996/97	FY 1997/98	FY 1998/99
Amount Ordered	\$22,936	\$11,175	\$45,936	\$24,525
Amount Collected *	0	\$5,000	\$30,000	\$24,525

* Restitution may be ordered as a condition of probation. The subject is given a period of time in which to pay or even allowed to make payments. However, if the subject fails to pay the restitution in the time required, it is considered a violation of the probationary order. If the Board orders the probation terminated, all of the conditions including the order to pay restitution are also terminated. In some cases, rather than terminate the probationary order, the Board will allow the subject additional time to pay. Explanations for the difference between the amount ordered and the amount collected follow:

FY 95/96: \$4,500, failed to pay, probation terminated
 \$18,436, failed to pay in time, re-ordered to pay in FY 97/98
FY 96/97 \$6,175, allowed to make payments
FY 97/98 \$2,500, failed to pay, discharged by bankruptcy
 \$13,436, failed to pay, in violation of probation

PART 4.

Board for Professional Engineers and Land Surveyors

BACKGROUND PAPER FOR 1999 PUBLIC HEARING

Identified Issues, Background Concerning Issues, Staff Recommendations, and Questions for the Board

PRIOR SUNSET REVIEW: The Board for Professional Engineers and Land Surveyors was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) three (3) years ago (1996-97). The JLSRC and the Administration recommended only extending the existence of this Board for two more years because of major unresolved issues pertaining to the regulation of engineers. The legislature passed SB 828 (Greene) (Chapter 828, Statutes of 1997), which extended the Board's sunset date to July 1, 2000 and instructed the Board to address the unresolved problems as identified by the JLSRC and the Administration prior to the next sunset review hearing. SB 1306 (Figueroa) (Chapter 656, Statutes of 1999) extended the sunset date of Board for one more year, so that it could be reviewed in 1999. The following are unresolved issues pertaining to the this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. Where necessary, the staff of the JLSRC have made preliminary recommendations for members and Department of Consumer Affairs to consider. There are also questions that staff have prepared concerning the particular issue. The Board was provided with these questions and should address each one.

CURRENT SUNSET REVIEW ISSUES:

ISSUE #1. ALTHOUGH THE BOARD WAS UNABLE TO RECEIVE THE LEGISLATURE'S, OR THE ADMINISTRATION'S APPROVAL FOR ITS PROPOSAL TO REWRITE THE ENTIRE PROFESSIONAL ENGINEER'S ACT, THERE MAY STILL BE CHANGES TO SPECIFIC SECTIONS OF THIS ACT THAT ARE STILL NECESSARY.

BACKGROUND: Throughout the 1970s and 1980s, the Board has struggled with practice and title act registration without resolving what the appropriate level of regulation should be. There are currently three practice-restricted disciplines (Civil, Electrical and Mechanical), and ten engineering specialty "title acts" regulated by the Board (Agricultural, Chemical, Control Systems, Fire Protection, Industrial, Manufacturing, Metallurgical, Nuclear, Petroleum and Traffic). The title acts grant recognition to those engineers who have met the experience and testing requirements of the Board, and only allow those who have met the qualifications to call themselves "professional engineers" (PE) and use the specific engineering title. However, it does not restrict other engineers or non-engineers from offering similar services in those engineering disciplines.

California is unique in offering title act registration. Other states have “generic” licensing laws where all engineers are licensed (registered) as PEs. There are generally no restrictions on the use of the specialty title, but just on the use of the term PE. However, an engineer who is working in the area of industrial engineering, for example, (a California title act branch) would have to be licensed with that state, since any engineer practicing or offering to practice engineering must be licensed unless some exemption applies. In many states the exemptions for licensure are somewhat narrow and restrictive.

In 1982, the Legislature required the Board to review all practice and title disciplines and submit a report to the Legislature. In May 1984, the Board adopted a motion to retain the current practice disciplines, add chemical engineering as a practice discipline, and freeze the title disciplines as written. The proposal to change chemical engineering to a practice act was never submitted to the Legislature, and thus no changes occurred.

During the early 1990s, the Board revisited the issue of title and practice act registration. This prompted the beginning of what was called the “PE Act Rewrite.” For three years, from 1994 to 1997, the Board held 12 informational forums throughout the State and participated in approximately 50 meetings sponsored by professional societies. Finally, in January of 1997, the Board introduced Assembly Bill 969 (Cardenas). It was intended to update the way engineers are licensed and registered in California and make other clarifying changes. It completely restructured the licensing process for engineers by eliminating title acts and converting them to practice acts. Under this measure, the Board would have authority to convert title acts to practice acts or to eliminate them entirely. (It is usually the prerogative of the Legislature and the Governor to approve practice act restrictions.) The legislation also made many other changes to the PE Act that impacted the way engineers work within California, and for those coming from other states or countries. It would also have changed certain definitions and exemptions for licensure, thus expanding the number and types of engineers who must be licensed by the Board.

The Joint Committee took no position on the “PE Act Rewrite” during its initial review of the Board in 1996. It received final versions of this proposal too late to complete a thorough analysis prior to the November hearings. It instead recommended that the Board demonstrate to the Legislature and the Administration how the rewrite would improve the existing regulatory situation for consumers. It did however support the efforts of the Board to eliminate title acts where there was no risk of harm to the public by deregulation of a particular title act discipline.

The Board was unable to generate any significant support from either the Legislature or the Administration for its proposal during 1997. One of the reasons given for the failure of AB 969 was a lack of understanding and confusion about what the Board was trying to accomplish by rewriting the entire Professional Engineers Act. The measure was seen as too limiting and restrictive on the current practice of engineering in this State. Although the Board claimed that this new licensing scheme would clear up the confusion and problems with the current Engineer’s Act, insufficient evidence was provided to demonstrate that this would be accomplished.

The Center for Public Interest Law (CPIL) expressed some major concerns regarding this proposal as well. In a letter to the Board dated October 2, 1995, CPIL outlined some of its concerns as follows:

- The proposed model of licensure within the PE Rewrite would create 13 new licensing categories without the benefit of sunrise-style analysis of the Legislature.
- Provisions in this proposal could drive unregistered title act engineers to other states, inhibit new business from moving to California, and impose unmanageable costs on existing businesses.
- These new practice areas would not be defined in statute or regulation, but instead the Board would rely on test plans of the National Council of Examiners and Engineers and Surveyors (NCEES) to define areas of practice for both testing and enforcement purposes. However, CPIL said that determining which engineering disciplines should require registration in California based on whether or not a national organization offered a test in the particular discipline was “unacceptable.” Instead, such determinations should be based on potential harm to the public by incompetent practice within particular engineering disciplines.
- Disciplinary action against engineers for incompetence would be made more difficult because of shifting burdens of proof. If engineers were outside their area of discipline, as permitted by the PE Rewrite, they would be required to prove competency in that area, even though undefined by the Board. The engineer “would bear the burden of proving an unprovable thing.”

CPIL indicated that the PE Act Rewrite was quite possibly worse than the existing statute.

The PE Act Rewrite language was finally dropped from AB 969 in January of 1998, and the amendments to the bill simply changed the name of the Board, allowed engineers registered by the Board to be considered as “licensed engineers,” included the word “licensed” along with the word “registration” in other parts of the PE Act, and eliminated the examinations for corrosion, quality, and safety engineering. (All those currently titled as such could continue to use the title, but after January 1, 1999, these three branch titles would be eliminated from the PE Act.)

It is still unclear why, after a three-year effort by the Board to rewrite the PE Act, their proposal was never even heard by the first policy committee of the Legislature. It is also unclear, from the Board’s perspective, whether there may still be changes needed to update and clarify the PE Act.

QUESTION #1 FOR THE BOARD: *Please provide a brief overview of the efforts of the Board to rewrite the Professional Engineers Act, and why the Board was unable to generate support and provide sufficient justification for this proposal. Were there concerns raised by others that the Board was unable to address? Are there still changes proposed in its PE Act Rewrite that should still be considered by the Legislature to either clarify or update the Act.*

ISSUE #2. DOES THE BOARD STILL NEED TO EVALUATE THE NEED FOR TITLE ACTS FOR SPECIFIED BRANCHES OF ENGINEERING.

BACKGROUND: Although the Board was not granted legislative authority to make determinations about which title acts should be eliminated or converted to practice acts, the Board has always had the authority to evaluate whether specific title acts are necessary and make recommendations to the Legislature and the Administration. The Board took the first step in accomplishing this through the passage of AB 969, which eliminated the title act branches of corrosion, quality, and safety engineering. The Board also conducted two meetings to allow affected engineers an opportunity to respond to this original proposal. At the outset, elimination of the title act for traffic engineers was also considered, but agreement was reached that deregulation of this branch could endanger the safety of the public on our highways, and local cities and county transportation agencies required registration.

The Joint Committee recommended, in anticipation of a review of the Board in September 1998, that it conduct a more thorough analysis of the remaining title acts that potentially could be eliminated without endangering the health, safety, property, or welfare of the public, and “clearly demonstrate why the title act should be continued.” The Joint Committee provided a number of criteria that could be used in performing this analysis. Although the Board did address some of the criteria, no discussion, conclusions or justifications were reached concerning each of the ten remaining title act disciplines. The Joint Committee determined only that all title acts should be continued for now because there is too much controversy surrounding their elimination, because of comity considerations, and because NCEES currently provides an examination in those particular disciplines. (It should be noted that the Board does not have title acts for all branches of engineering tested by NCEES. Other areas tested by NCEES include environmental, mining and mineral, and ship design.) The Board indicated that it still believes that title act registration provides minimal public protection and should be replaced with practice act regulation for all branches of engineering. The Center for Public Interest Law (CPIL) was critical of this analysis and conclusions reached by the Board.

STAFF RECOMMENDATION: *The Board should consider using an independent professional consulting firm to perform a more thorough and objective analysis on the need to continue with the individual title acts, and provide other recommendations it may have to eliminate title acts which may no longer be recognized by other states and the NCEES.*

QUESTION #2 FOR THE BOARD: *Please explain why the Board still believes that the certain title acts should be practice acts, and what attempts the Board has made to evaluate the need to continue with individual title act disciplines? Does the Board believe that a more thorough and objective analysis on the need to continue with the individual title acts should be performed as recommended by JLSRC staff?*

ISSUE #3. A MAJOR ISSUE IS STILL UNRESOLVED CONCERNING WHAT SUPPLEMENTAL OR INCIDENTAL ENGINEERING WORK SHOULD BE ALLOWED WITHIN THE PRACTICE AREAS OF CIVIL, ELECTRICAL AND MECHANICAL ENGINEERING.

BACKGROUND: The definitions of the practice act branches of civil (defined in statute), electrical and mechanical engineering (defined in Board regulations) are very broad and general. Each definition encompasses a wide scope of practice and outlines a number of tasks and activities included within the particular branch. Conversely, the definitions of the title act branches are more limited and specific and each definition ends with the sentence: *“The above definition of (Title) engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering.”*

This last sentence has created ambiguity in what may be considered as permissible tasks or activities outside of the engineers branch of registration, because most of the definitions of title act engineers are encompassed by one or more practice act definitions. That is, there is clearly an overlap in most title act branches, since by definition they constitute a specialty subdivision of the engineering work covered in at least one of the practice acts. For example, traffic engineering falls within civil engineering, control system engineering falls within electrical engineering, fire protection engineering falls within mechanical engineering. However, because overlap is not legally recognized, tasks or activities performed by title engineers that fall under civil, electrical or mechanical engineering, or those performed by electrical or mechanical engineers that fall under civil engineering, could be considered as unlawful and the unlicensed practice of engineering.

The Engineer’s Act does not adequately reflect the current practice of engineers in this State. Other states have recognized this problem, as well as the NCEES, and have recommended legal recognition of overlap that occurs within the different branches of engineering. Other states also permit some supplemental or incidental practice in other areas where the engineer, either through education, experience or training, is competent to perform the work.

Currently, civil engineers are the only registrants who can perform work in any other branches of professional engineering within California. Section 6737.2 of the B&P Code provides an exemption that allows supplemental work by a civil engineer as long as the work is incidental or in connection with civil engineering work or study.

The Board has recommended that only electrical and mechanical engineers be allowed to perform incidental civil, electrical or mechanical engineering work, as long as they are competent in these areas based on education, training, and experience. They believe this would reduce the number of gray areas between these related disciplines of civil, electrical and mechanical engineering. However, the Board does not agree with allowing title act branches to perform work in the practice act branches of civil, electrical or mechanical engineering, because it does not have the ability to prevent a title act engineer from practicing in the future if they are found to be incompetent. The Board can only revoke the use of the title, not their practice. (It should be mentioned that the Board originally proposed allowing some overlap between all branches of engineering, as long as the title acts were converted to practice acts.)

The Board has not as yet provided any specific proposal to carry out this recommendation, and has raised objections from other engineering groups that this would not resolve the ongoing confusion for those who work in the other engineering branches.

Some have argued that the Board's ability to only revoke the title of the engineer, and not prevent future practice, would be a valid one if there were not other legal safeguards which prevent title act, and even practice act engineers, from performing engineering work on specific types of projects outside their own area of expertise. For example, local agencies and the state will require that only a civil, structural, mechanical, or electrical engineer licensed by the Board can provide particular engineering services. Generally, the local agency through permitting or plan checking has more direct public safety responsibility on specific projects. For example, a licensed structural engineer is required in the building of schools and hospitals, and local agency building codes require a licensed civil, mechanical or electrical engineer for a variety of fixed works type projects. There are many other instances in which the state and local jurisdiction determines the particular type of engineer to be used.

Although this is a valid argument, the Board should still have the ability to prevent an incompetent engineer from practicing in one of the practice-regulated areas of civil, electrical and mechanical engineering. It should be made clear that if action is taken by the Board against an engineer because he/she did not have the requisite education, training, or experience to be performing the engineering work, and that the work was performed in a negligent or incompetent manner, then the engineer's registration and use of title would be revoked and any future work in one of these practice areas would be a violation of law (misdemeanor).

Although the Board has never taken such action, the use of this authority would prevent future use of the title and would put others on notice that the Board found sufficient reason to revoke the registration of this engineer for cause. Since many agencies require registered engineers to hold particular titles, the impact on the engineers practice would be substantially affected and in many instances would prevent them from performing work within their own branch of engineering. This should be sufficient to protect the public against any title engineer who may consider performing engineering services outside his/her own area of expertise.

Since action by the Board involving incompetence, or practice beyond one's competence, would become critical to regulating the practice of engineers in this state, this term should be defined. Also, because of the confusion that sometimes exist between an action taken for incompetence and one taken for negligence, the term "negligence" should also be defined. The NCEES, as well as some other states, have provided definitions either in statute or as part of their professional code of conduct.

The only remaining issue involving supplementary practice is how broad or restrictive the engineering work should be in the areas of civil, electrical or mechanical engineering, and what involvement the Board should have in trying to define either supplemental or incidental practice.

There has been at least one proposal (SB 191, Knight) that would allow practice in these areas as long as the registered engineer was by education, training, or experience fully competent and proficient to perform the work. (This legislation is sponsored by the California Legislative Council of Professional Engineers and is currently a two-year bill. It is pending before the Senate Business and Professions Committee.) This measure allows for the broadest overlap into the

practice areas of civil, electrical, and mechanical engineering. The Board opposed this measure. The Board's primary concern was that this bill would allow any engineer to practice all forms of engineering without restriction and perform unrelated work as to his/her specific branch of engineering.

Other states have restricted supplementary practice into areas that are at least related to the registered branch of engineering. This is also the same restriction that is placed on civil engineers within California. Only those activities or projects that are in connection with or supplementary to the practice of civil engineering are permissible.

There should be no need, however, for the Board to define permissible supplementary practice or determine which specific tasks or activities professional engineers can and cannot perform. Attempting to provide such a definition would be an impossible task for the Board to perform (see discussion in next issue). And since there has been no need to define these permissible areas for civil engineers, there should be no reason to define these areas for other registered engineers.

It should also be noted that there are generally accepted standards of practice for each discipline of engineering, as there are in any profession that has specialty areas of practice. If an engineer is working outside his/her area of expertise, or if there is an issue of competence or negligence, this is a problem of proof for the Board if disciplinary action is to be taken. Expert witnesses would generally be used to assist the Board in determining whether specific acts amount to incompetence or negligence, or the Board would provide proof that the engineer lacked the appropriate education, training, or experience in the particular discipline.

Another consideration is that engineers are generally examined in the branches of engineering where overlap may occur and thus the Board is able to identify what type of engineering work would be unrelated to their particular practice. An occupational analysis is also required and performed on examinations that define appropriate tasks and activities for the particular branch of engineering. Definitions of permissible supplementary practice would add little to the constantly changing standards of practice for engineers, and could actually be in conflict with the more accepted standards, training and education for a particular branch of engineering.

STAFF RECOMMENDATION: *The state should legally recognize that overlap (or supplemental) engineering work occurs between the different disciplines of engineering and that some overlap should be allowed as long as the engineer is competent (based on education, training and experience) to perform the engineering work. This would include engineering work that overlaps into the licensed practice areas of civil, mechanical and electrical engineering, but that overlap into these areas should be restricted to projects or activities that are related to the engineers registered branch of engineering. The Board should not have to define in regulations permissible supplementary practice, or which specific tasks or activities professional engineers can and cannot be performed.*

Proposed Legislation Recommended by Staff:

(1) Amend Section 6737.2 to recognize practice overlap:

“It is recognized that there are areas of practice among the different disciplines and branches of engineering, regulated by the Board, that overlap and must be accommodated. Registrants under this chapter may engage in practice in another branch or discipline regulated pursuant to this chapter only to the extent that such persons are by education and/or experience fully competent and proficient. As such work may be in connection with or supplementary to the work of the professional engineer on a specific project or activities related to their registered branch of engineering, it shall not be necessary for the Board to define in regulations permissible supplementary practice, or which specific tasks or activities professional engineers can and cannot perform.”

(2) Amend regulations to delete the following sentence within the definitions of title act branches so that supplemental engineering work is permissible:

“The above definition of (Title) engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering.”

(3) Definitions of Incompetence and Negligence:

Incompetence: *The term “incompetence” shall mean the execution of acts demonstrating errors and/or omissions in the professional work of a licensee in this Act, which, taken as a whole, displays a pattern of lack of knowledge and understanding of, or the inability to apply the principles and intellectual tools of the applicable discipline or the fundamentals of engineering. Such patterns may be revealed in one project or in a series of projects for which the individual had responsibility.*

Negligence: *The term “negligence” shall mean the execution of acts demonstrating errors and/or omission in the professional work of a licensee in this Act, which is of a sufficiently serious nature to create clear danger to the lives of, and safety of builders, users, or the public, or of property, or monetary damage or loss. Negligence, under the terms of this Act, applies to situations where it can be demonstrated that the error or omission is occasioned not by lack of knowledge on the part of the professional, but on lack of due care in accordance with accepted engineering practices.*

[Rather than appearing in statutory form, these definitions could be placed in regulation and adopted as part of the rules of professional conduct for engineers.]

(4) Include the following as unprofessional conduct:

“Section 6780. It is unprofessional conduct for a person licensed under this chapter to perform, or hold himself or herself out as able to perform, engineering services in a branch of engineering other than that branch in which the registrant has demonstrated proficiency by registration, unless fully competent and proficient to perform the work, and such work is in connection with or supplementary to the work of the professional engineer on a specific project or activities related to his/her registered branch of engineering.”

(5) Amend Section 6787 (misdemeanor violations) to include the following:

“Who shall perform, or offer to perform civil, electrical or mechanical engineering work who is in violation of Section 6780.”

QUESTION #3 FOR THE BOARD: *Please explain the issue of overlap and supplementary practice being performed by engineers, and why it recommends that it only occur within the branches of civil, electrical and mechanical engineering. Please respond to recommendations of staff concerning this issue.*

ISSUE #4. SHOULD THE BOARD CONTINUE TO BE INVOLVED IN DEFINING THE PRACTICE AREAS OF ELECTRICAL AND MECHANICAL ENGINEERING?

BACKGROUND: The authority of the Board under Section 6717 to define the scope of practice for each branch of professional engineering (other than civil engineering) is unique and has possibly created more controversy for the Board than any other regulatory power it has. It has involved the Board in several turf battles between a number of engineering disciplines, both licensed and unlicensed, and has taken up an inordinate amount of Board time and energy in attempting to amend regulations and to redefine specific branches of engineering.

Much of the controversy has surrounded claims that the definitions are both contradictory and ambiguous and cause confusion for engineers, especially for those whose engineering work may overlap into the practice areas of electrical and mechanical engineering. The Board has made attempts to redefine these areas, but they have not been able to pass the Office of Administrative Law review.

The real problem is that it's almost impossible to limit engineers to one practice area. For example, the current definitions for mechanical and electrical engineering are broad enough to include much of industrial and manufacturing. Other definitions of branches suffer from this same problem. Even the definition of “civil engineering,” in Section 6731 of the B&P Code, is so broad as to encompass almost all other branches of engineering.

However, the Board is still involved in efforts to redefine both electrical and mechanical engineering and has received proposals from their Technical Advisory Committees (TACs) for consideration. The perception is, once again, that these new definitions would limit the ability of engineers to perform work in these areas if the definitions are broadened, and would include the work and practice of other engineers who are not currently regulated by the Board.

SB 191, as mentioned earlier, is an attempt to deal with this issue by repealing the authority of the Board to define branches of engineering for any purpose. (It should be noted that the sponsors of SB 191 recognize that the Board should be able to at least define branches of engineering and establish guidelines for education, experience and examination purposes.)

The proponents of SB 191 argue that the Board should no longer need to focus its attention on defining a branch of engineering for purposes of restricting an engineer's practice to one

particular branch, especially if overlap within branches of engineering is permitted. That defining practice restrictions for this profession should be the prerogative of the Legislature. Proponents of SB 191 also argue that after many years of the Board's attempting to perform this task, it has failed. It should instead be focusing its attention on whether an engineer is competent to be performing the particular engineering work if a complaint is received, either as it concerns work within their own branch of engineering, or when overlap occurs. The proponents of SB 191 agree, however, that the Board should still have the authority to define engineering branches for purposes of evaluating an applicant's qualifications for registration, developing examinations, and for ascertaining an engineer's education, experience, technical knowledge and competence to practice or perform work in a particular branch of engineering.

Other states recognize this approach. They allow for definitions for specified purposes in defining branches of engineering but do not allow their boards to construe these definitions as a way to limit the area of practice for a registered engineer.

STAFF RECOMMENDATION: *Only allow the Board to define, by regulation, areas of engineering discipline for specified purposes, but not for restricting the area of a registrant's practice. The definitions of electrical and mechanical engineering currently in regulations should be included in statute. Any changes proposed for these definitions should be presented to the Legislature for consideration.*

Proposed Legislation Recommended by Staff:

(1) Amend Section 6717 to read as follows:

"The board may, by regulation, define each branch of professional engineering, other than civil engineering, for purposes of review of experience, selecting the examination to be administered, and defining the areas of examination to be administered, and for ascertaining an engineer's education, experience and competency to practice in that particular branch of engineering or in other branches of engineering. The definitions for branches of engineering shall not be construed to limit the areas of a registrant's practice of engineering."

(2) Amend definitions of electrical and mechanical engineering in California Code of Regulation section 404, into Section 6734.1 ("Practice of electrical engineering") and Section 6734.2 ("Practice of mechanical engineering") of the Business and Professions Code.

QUESTION #4 FOR THE BOARD: *Please explain the problems that the Board has encountered in trying to redefine the practice areas of mechanical and electrical engineering. Is the Board still involved in attempts to redefine by regulation the practice areas of mechanical and electrical engineering? Please respond to the staff recommendation to remove the authority of the Board to define these branches of engineering for purposes of restricting the practice of engineers, and to include the current regulatory definitions of engineering and mechanical engineering in statute.*

ISSUE #5. THE BOARD’S USE OF “POLICY RESOLUTIONS” AND OTHER OPINIONS TO CLARIFY AREAS OF ENGINEERING PRACTICE HAVE BEEN CONSIDERED AS “UNDERGROUND REGULATIONS.”

BACKGROUND: In early 1995, the Board decided to formalize its opinions and policies on various aspects of the Professional Engineers Act, the Professional Land Surveyors’ Act, and Board Regulations, as well as some of its own internal management policies, as “Board Policy Resolutions.” Before issuing these policy resolutions, the Board’s attorneys researched the matter to determine if the Board could do so without adopting the opinions as formal and binding regulations. Based for the most part on the holdings in Skyline Homes, Inc. v. Department of Industrial Relations [(1985) 165 Cal.App.3d 239], the Board’s attorneys said that policy resolutions would not need to be adopted as formal and binding regulations as long as they (1) are not intended to amend, supplement, or revise any express statute or regulation concerning professionals subject to licensure by the Board; (2) are merely restatements of existing law and are intended only for clarification; (3) are not intended to implement, interpret, or make specific the law enforced or administered by the Board; and (4) are not intended to govern the Board’s procedures.

The intent of the Board in issuing policy resolutions was to provide answers to commonly asked questions about existing statutes, regulations, and procedures. The Board did not intend for the policy resolutions to be treated as “new laws” or to be viewed as binding opinions. They were simply to be restatements of existing laws or the only legally tenable statement of law. Unfortunately, members of the professions, consumers, and governmental agencies did not accept them as such and began to treat the policy resolutions as binding laws that would be enforced by the Board. In early 1999, when the Board realized the extensive problems this misunderstanding was creating, it directed its Liaison Deputy Attorney General (DAG) to do further research into the issue of policy resolutions and whether they needed to be adopted as regulations. (The DAG is assigned to the Board to advise them on enforcement, disciplinary and other administrative procedure issues.)

While the Board’s DAG was conducting further research, the Office of Administrative Law (OAL) issued a determination that the specific subject covered by one policy resolution constituted an “underground regulation” (the adoption of regulations without undertaking the rulemaking process required by the Administrative Procedure Act). It should be noted that OAL did NOT address the general issue of whether policy resolutions are underground regulations; OAL only addressed the specific subject of one policy resolution.

In the spring of 1999, after completing the new review, the DAG advised the Board that a 1996 California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4th 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations. Based on this new ruling, the Board’s attorney advised the Board to review all of its existing policy resolutions to determine which ones should be adopted as formal and binding regulations, which ones were no longer necessary, and which ones would still meet the newly narrowed instances in which a regulation would not be needed. The Board directed its staff, its Legal Counsel, and its DAG to begin this review and provide recommendations to the Board. The recommendations were made at its September 1999 meeting, when the Board voted to withdraw nine policy resolutions, in addition to two previously withdrawn.

These policy resolutions were withdrawn because the topics addressed are no longer at issue, have already been addressed in regulation or statute, or need to be adopted as a regulation. The remaining eleven are still being reviewed by the Board's Legal Counsel and DAG for discussion at the Board's next meeting in December, 1999.

It is unclear whether the Board still plans to use policy resolutions as a way to interpret and provide opinions concerning particular areas of practice. However, the entire use of policy resolutions by the Board to restate or clarify certain areas of law, especially pertaining to areas of practice for engineers, has now been called into question by the Attorney General's Office. The Board had requested the Attorney General to prepare a memorandum concerning the use of Policy Resolutions to restate and clarify certain area of the PE Act. In May 1999, the Attorney General issued a memorandum strongly suggesting that the Board sharply curtail the use of Policy Resolutions, and that if there is a need for clarification of law, it should be done through the regulatory process.

The policy resolutions are another instance in which the Board has attempted to define or restrict areas of practice for those involved in engineering type work, including those areas that have not been defined as such in the past. One notable policy resolution concerned the practices of land surveying and civil engineering related to the surveying and mapping of accident scenes by law enforcement personnel. In July, 1998, the Board, pursuant to a recommendation of its Land Surveying Technical Advisory Committee, adopted a policy resolution indicating that activities associated with the mapping of accident scenes are in connection with the practice of civil and land surveying, and that such activities should be undertaken only by a civil engineer, a land surveyor or one is supervised by one of these registered engineers. The Board then sent a memorandum to county sheriffs, city police chiefs, city engineers, and directors of public works, apprising them of this resolution. There was no ability for law enforcement or other affected parties to have input into this decision, or for OAL to review the authority of the Board in issuing this interpretation of it PE Act. Rather than argue the point, law enforcement officials sought legislation to clarify the issue and exempt themselves from the PE Act. The Board has since withdrawn this policy resolution.

Use of policy resolutions is not the only instance in which the Board has been involved in "underground rulemaking." In a 1993 hearing of the Business and Professions Committee, CPIL commented that the Board has done an enormous amount of underground rulemaking, and outside of one other agency, "is the subject of more petitions for regulatory determination to OAL." The following are other examples:

1. Board attempt to define areas of practice civil engineering and geology considered as underground regulation by OAL. In 1989, the Board of Engineers and Land Surveyors and the Board of Geologists and Geophysicists developed a document titled "*Fields of Expertise for Geologists and Civil Engineers.*" The document was intended to differentiate between the responsibilities and duties of registered civil engineers and geologists; it identified activities within the scope of practice of engineering and geology, reviewed the "gray areas" where civil engineering and geology overlap, and listed activities that are normally performed by both professions.

In 1995, both boards agreed that this document should be updated to reflect changes in both industries. A new document was developed that contained a chart describing tasks and functions that may be performed by civil engineers, geologists, or both. In October 1996, the Board of Engineers and Land Surveyors adopted the document and published it in its licensee newsletter. At the request of the Board of Geologists and Geophysicists, the document was revised. The Board of Engineers and Land Surveyors approved the revised document and in February 1997 and put it on its website. However, the Board of Geologists and Geophysicists decided not to adopt the revised document and asked the Board of Engineers and Land Surveyors to rescind its approval as well. The Board of Engineers and Land Surveyors refused to rescind its approval, but agreed to consider modifications proposed by the Board of Geologists and Geophysicists. A task force consisting of representatives from both boards has been meeting since that time to try to iron out the disagreements over the content and format of the document.

In the meantime, however, a request was submitted to OAL for a determination whether this document constituted “underground rulemaking.” In May 1999, OAL concluded that the document of “Fields of Expertise” issued by the Board of Engineers and Land Surveyors is a regulation and is invalid unless adopted pursuant to the regulatory process.

2. Board’s policy to restrict Fire Protection Engineers from designing fire protection systems considered as underground regulation by OAL. In 1990, OAL issued a determination that the Board’s policy of prohibiting Fire Protection engineers from performing design services and from designing fire protections systems is a regulation and is invalid unless adopted pursuant to the regulatory process.

3. Board’s policy against investigating fee disputes has been considered as underground regulation by OAL. (See Discussion in Issue #7)

4. Board’s policy to require all “plan checking” done by local government to be under the responsible charge of an engineer should have been submitted to the regulatory process. In 1995, the Board’s policy to require all local government plan checking to be conducted under the responsible charge of an engineer became highly controversial. Again, because this policy was not submitted for regulatory review, those parties directly impacted by the decision were unable to voice their concerns. The California Building Officials responded that such a radical policy would have substantial impact on local government costs. The Board indicated they were not concerned with costs. Ultimately the Board revised this policy.

The Board is still involved in discussions involving areas of practice for engineering, and it is unclear whether the Board will use the regulatory or legislative process if opinions or pronouncements are to be issued. For example, the Board recently discussed the conflict that may exist between the PE Act and new legislation (AB 850, Chapter 585, Torlakson) that would exempt specified “quality safety inspectors” of amusement parks from having to be engineers, and has asked their legal counsel for a determination as to whether this provision would be precedent-setting for exemptions from the PE Act.

It is not clear why the Board is even involved in this discussion at this point in time. The Board had an opportunity to express their concerns during the passage of this measure. (It is not clear if they did so.) The Legislature and the Governor would seem to have addressed this issue.

The Board also recently had an update done on its Traffic Engineering examination. This was done because there were tasks on the examination that had no relevance to what Traffic Engineers actually did in practice, and tasks or activities that were not adequately reflected in the examination. The Department's Office of Examination Resources asked that the Board adopt the plan. The Board, however, now calls into question the tasks that are normally associated with the practice of Traffic Engineers and believes some of these tasks may be electrical engineering.

It would seem clear, based on the Attorney General's Office legal opinion, and decisions by the Office of Administrative Law, that the Board should no longer pass policy resolutions or make other interpretations or pronouncements concerning the practice of engineering without first submitting them to the regulatory or legislative process.

STAFF RECOMMENDATION: *Any policy resolution or other proposals by the Board pertaining to permissible tasks or activities associated with the practice of engineering should go through the regulatory or legislative process. This will ensure the Board has appropriate authority to define a particular area of engineering.*

QUESTION #5 FOR THE BOARD: *Please explain the reason and background concerning the use of policy resolutions or other opinions by the Board, rather than the use of the regulatory process, to define specific activities or tasks associated with the practice of engineering, Does the Board still plan to interpret areas of practice for civil, electrical and mechanical engineering without using the regulatory process? Has the Board decided who is ultimately responsible for "plan checking" of engineered building and structures? Respond to staff's analysis and recommendation.*

ISSUE #6. THE BOARD'S POLICY AGAINST INVESTIGATING FEE DISPUTES HAS BEEN REGARDED AS AN "UNDERGROUND REGULATION."

BACKGROUND: On August 13, 1998, the Office of Administrative Law issued a ruling that the Board's policy of refusing to investigate billing or fee disputes constitutes illegal rulemaking, and hence is without force. The ruling came in response to a request for determination filed on April 22, 1991 by the Center for Public Interest Law (CPIL). The dispute arose over a policy that the Board printed on the form used by consumers to complain about the Board licensees. The complaint form read, "The Board does not have the authority to investigate disputes regarding client fees. Such disputes are considered civil matters. If you have a fee dispute, you may wish to contact an attorney of your choice or to resolve the dispute in small claims court." This policy was also restated in the Board's newsletter to licensees.

CPIL challenged this policy on the grounds that the Board is abdicating an entire area of its legislatively mandated disciplinary jurisdiction under the Business and Professions Code section 6775, which expressly authorizes the Board to take disciplinary action against licensees who "have been found guilty by the board of any deceit, misrepresentation, violation of contract, fraud, negligence, or incompetence in his practice." CPIL contended that in order to interpret its statute, the Board should have gone through the mandated Administrative Procedure Act rulemaking process that provides opportunity for public comment and legal review by OAL.

Immediately after CPIL filed its challenge, the Board removed the offending language from its complaint form and considered the issue moot. However, CPIL pursued a ruling by OAL on this issue to clarify the Board's responsibility in investigating fee disputes. OAL ruled that the Board's policy of refusing to investigate fee disputes clearly meets the definition of a "regulation" under the Administrative Procedures Act (APA's) because it interprets a law which the Board has a duty to enforce; it is not subject to any of the APA's exceptions to the rulemaking requirement; and, because it was not promulgated through the rulemaking process, it is without effect.

It is unknown whether the Board currently takes any action regarding a fee dispute between a licensed engineer and a consumer.

QUESTION #6 FOR THE BOARD: *Please explain whether the Board has jurisdiction regarding fee disputes between engineers and consumers. Does the Board investigate complaints from the public regarding fee disputes, if so, what action is taken by the Board?*

ISSUE #7. SHOULD THE BOARD PURSUE AUTHORITY TO ADOPT A WRITTEN CONTRACT REQUIREMENT?

BACKGROUND: During the Board's prior reviews, the Center for Public Interest Law (CPIL) expressed grave concerns about the Board's refusal to adopt a written contract requirement which could prevent most of these "fee disputes." CPIL was perplexed as to why the Board refused to adopt a written contract requirement. Although many occupational licensing agencies decline to become arbiters of fee disputes between their licensees and consumers, no other agency has so steadfastly refused to adopt professional standards that would prevent these disputes from happening.

Written contract requirements, as indicated by CPIL, are commonplace and protective of all parties in complex transactions of a technical nature that involve large sums of money and that have been imposed by the legislature on attorneys, architects, home improvement contractors, and landscape architects. "Even automotive repair dealers and electronic repair people must provide a written estimate which may not be exceeded without the prior consent of the consumer."

CPIL further explained that the use of a written contract simply codifies the expectations and obligations of both parties to an agreement. Due to the extensive variety and technical nature of engineering services, and due to the fact that the typical individual consumer has little or no experience with the design, construction, and maintenance of engineering projects, consumers frequently possess contractual expectations that conflict with those of the licensee. These conflicting expectations may involve whether the consumer will be consulted before incurring additional costs, whether the quoted or estimated price will cover certain engineering support services, the date that the services will be completed, and whether originally-contracted-for services may be withheld pending the consumer's approval of additional services. These conflicting expectations may go undetected until a dispute arises, absent a written contract requirement. Such a requirement protects consumers from unfair or coercive contracting and billing practices and reduces the need for costly litigation or administrative proceedings to determine disputed contract terms. It also protects engineers by ensuring that both parties

understand the essential terms of a professional contract, and by enabling them to enforce an engineer's lien when necessary (a lien may be enforced only when the underlying contract is in writing).

As further stated by CPIL, the Board is aware that the engineering industry uses written forms for some consumer transactions (in order to be able to enforce a lien), but these forms did not reflect the basic tenets of contract law — that both parties should agree on a price, and that if circumstances require a new price, it should be negotiated and not simply billed *post facto* by an engineer. That any objection to this requirement is not a *bona fide* objection to written contracts, but represents an attempt to protect adhesive contracts and prices changes made without prior agreement.

It would appear as if the Board might agree somewhat with this argument, as it has acknowledged that written contracts should be used in engineer-consumer transactions. As far back as 1991, this Board's own staff stated that "the majority of the 'complaints' they receive are due to the lack of a written contract." And the Board's own consumer pamphlet strongly encourages the use of a written contract ("you would be well advised to require a written agreement for the scope of services to be performed," accompanied by a picture of a written contract and a list of ten terms which should be addressed therein).

Since 1991, CPIL exhausted every possible remedy to compel the adoption of such a requirement (including legislation, a petition for rulemaking, a request for a regulatory determination by the Office of Administrative Law, and litigation to force the Board to disclose the number of consumer complaints that stem from the lack of a written contract). But the Board has refused to do so administratively and the industry has blocked a legislative remedy for no apparent reason.

STAFF RECOMMENDATION: *The Board should pursue legislation to adopt a written contract requirement for engineers.*

QUESTION #7 FOR THE BOARD: *Explain whether the Board has made any attempts to require a written contract for engineers, and if not, why not?*

ISSUE #8. SHOULD THE BOARD PURSUE THE DRAFTING OF A PROFESSIONAL CODE OF CONDUCT AND ETHICS FOR THE PRACTICE OF ENGINEERING.

BACKGROUND: The Board proposed in its PE Rewrite of the Engineers Act to draft a code of ethics (rule of professional conduct) and to take action against unethical practice. The Joint Committee recommended that it have an opportunity to review the draft of this professional code of conduct and ethics before it was either submitted as regulation or provided in statute. The Board did not pursue drafting or adopting a code of professional conduct. It indicated that existing law authorizes disciplinary action for fraud, deceit, misrepresentation, negligence, incompetence, breach of contract, and aiding/abetting another to violate the law, and by implication, that this is sufficient. However, the Board also indicated it is currently discussing this issue due to recent indications from the Attorney General's Office that such authority would be beneficial.

During the Board's 1996 sunset review, CPIL was very critical of the Board's inability to adopt professional standards of practice for the engineering profession. CPIL commented that, "although adoption of such standards for the post-licensure practice of a profession or trade is one of the three traditional functions of an occupational licensing agency, the Board had consistently neglected to establish any enforceable standards of practice for engineers."

There are currently a number of states that have adopted professional standards of practice. (Some examples include: Arizona, Colorado, Louisiana, New York, Texas, and Washington.) The NCEES has also recommended the adoption of rules of professional conduct.

STAFF RECOMMENDATION: *The Board should seek authority, if necessary, to adopt a professional code of conduct and ethics for the practice of engineering. It should also be "unprofessional conduct" to violate any standards or rules as promulgated by the Board.*

Proposed Legislation Recommended by Staff if Necessary:

Include the following language in the Professional Engineer's Act:

"The board, by regulation, shall adopt rules of professional conduct to maintain a high standard of integrity in the engineering profession, taking into consideration the rules and standards of professional practice adopted by national engineering societies and other states. It shall be unprofessional conduct to violate any of the rules of professional conduct."

QUESTION #8 FOR THE BOARD: *Has the Board pursued the adoption of professional standards and conduct for the practice of engineering? Does the Board have the authority to adopt such standards and rules through the regulatory process?*

ISSUE #9. PROBLEMS AND CONCERNS REGARDING THE BOARD'S ENFORCEMENT PROGRAM.

BACKGROUND: In 1996, the Center for Public Interest Law (CPIL) argued that the enforcement program for this Board is almost nonexistent. It commented that it costs the Board about \$2.4 million to take few disciplinary actions. This has not changed. For FY 1998/99, the Board spent \$2.8 million for its enforcement program. It opened 195 complaints, closed 166 complaints, had 171 complaints pending, referred 15 for investigation and took a total of 15 disciplinary actions, 6 of which were license revocation, the remainder probation.

The Board also spends a smaller percentage of its budget on enforcement overall than most other boards. As of FY 1998/99, approximately 36% of its budget was spent on enforcement while other boards spend on average about 65%. A larger percentage of the Board's budget, about 56%, is spent on providing examinations.

There has also been an increase in the average number of days to complete the investigation of cases. In FY 1994/95, cases were taking on average about 4 months (or 125 days) to investigate. As of FY 1998/99, it is taking the Board about 9 months (or 267 days) to investigate cases. This does not include the amount of time it takes to also prosecute the case (which can take anywhere from 1 to 3 years). This is contrary to other boards which are actually reducing the amount of time it takes to investigate and prosecute cases.

The Board also makes little use of its authority to cite and fine authority. On average, about 6 citations are issued per year. The Board indicates that it only received authority to issue citations in FY 95/96. This is not true. The Board was granted authority, along with other boards under the Department, in 1986. It failed to adopt the necessary regulations to implement this authority until late 1995, and this was only after the insistence of the Chair of the Business and Professions Committee in 1993, Senator Dan Boatwright.

An issue of concern to the Joint Committee has involved enforcement action taken by this Board against engineers who were responsible for major surface sinkages of the Los Angeles subway tunnel in August 1994. (This engineering failure could have caused substantial injury to the public if it had occurred once the subway was completed.) The Los Angeles Times reported that engineers, both from out-of-state and from within California, were used in the design and preparation of the construction requirements of the tunnel, and agreed to substitute materials that led to the collapse. It was also indicated by the Times that lines of authority on this project were so diffused that many unlicensed engineers – with key decision-making authority – were illegally practicing civil engineering under the law. When the Board was asked for a response, they could not give the Times a clear-cut opinion on whether licensed engineers had to be used on the project or who may have been responsible for the collapse.

This Committee requested to be kept abreast of this case in 1996, because it was unclear what action the Board was taking, if any. In February 1997, the Board indicated that it had filed an accusation against two engineers. It is unknown what decision the Board has reached concerning this serious incident.

QUESTION #9 FOR THE BOARD: *Please explain the following: (1) Why does this Board spend almost \$2.8 million (FY 1998/99) on so few complaints referred for disciplinary action? (2) Why has there been an increase in the time it takes to investigate and prosecute cases? (3) Why does this Board make little use of its cite and fine authority? (4) Please provide an update on action taken by the Board regarding the surface sinkage of the Los Angeles subway tunnel.*

ISSUE #10. HAS THE BOARD EXAMINED THE IMPACT OF THE INTERNATIONAL BUILDING CODE ON ENGINEERING PRACTICE?

BACKGROUND: In September 1999, the International Building Code 2000 (IBC 2000) was adopted by the International Conference of Building Officials (ICBO). The new code should be published around April 2000, incorporated in the State Building Code in early 2001, and effective in California in mid-2000. The Code will also be used by 25 other countries and will help to standardize materials, construction, and architectural and engineering rules.

It is unknown what changes may have to be made to engineering laws to conform to this new code, and whether the Board has addressed this issue.

QUESTION #10 FOR THE BOARD: *Has the Board examined the impact of the implementation of the international building code on engineering practice in this state?*

ISSUE #11. IT IS UNCLEAR WHETHER CERTAIN STATE-ONLY EXAMINATIONS PROVIDED BY THE BOARD ARE STILL NECESSARY.

BACKGROUND: During the review of this Board in 1996, the Joint Committee questioned whether the Board still needed to provide two state-only examinations. They included the “Structural Engineers” examination and the “Land Surveyors” examination.

California Structural Engineering Examination. For a civil engineer to use the title “structural” engineer, they must pass the state Structural (Civil) examination. NCEES also provides a national examination for structural engineers. The Joint Committee questioned why the national exam, which would provide for better comity for out-of-state structural engineers, could not be used. The Board appointed a subcommittee to look into this issue. They reached the conclusion that the NCEES exam is an entry-level exam that is not suitable for licensing purposes, whereas California’s exam is a “mastery-level exam” and requires three years of experience before taking it. The NCEES structural examination is given in two parts, a I and II examination. It is unclear whether the Board was considering both. The Board also did not indicate how many other states provide this examination and how many other states have their own structural examination.

The Board indicated that the NCEES is currently changing its examination development process and that during the transition they believe they can work with them to develop an acceptable structural engineering examination.

California Professional Land Surveyors Examination. The Board administers its own examination to land surveyor candidates. Recently the pass rates on this exam have plummeted to 15% in 1993, 8% in 1995, 1.9% in 1998, and 14.4% in 1999. The NCEES also provides a national examination for land surveyor candidates. In 1998, the pass rate for the national examination was 67.2%. The Joint Committee questioned once again why the national exam could not be used, which would provide for better comity for out-of-state land surveyors and at least improve the pass rate for land surveyor candidates. Also, 52 member boards of the NCEES use the national land surveying examination.

The Board argued that the NCEES land surveyor examination is an “entry-level” examination and is not suitable for licensing in California. The Board, however, cannot adequately explain the low passage rate of its examination. A land surveying association has expressed concerns over this low passage rate and has asked the Board to: (1) release the completed exam questions, in keeping with past practice, so that the surveying community can examine the complexity of the test and provide feedback through existing trade associations; (2) publish statistics on the educational background of those applicants who have passed the exam over the past few years; and (3) approve the use of the NCEES exam on a one-year trial basis to see how California applicants do when compared to the rest of the nation. The Evaluation/Qualifications Committee responded to these concerns by indicating that one of the major contributing reasons for the low pass rate is that “the candidate population does not have adequate education, training/experience, and preparation to take the examination.” The Committee rejected the first proposal outright and indicated a desire to wait till the year 2000 examination before considering a one-year trial basis of the NCEES land surveyor examination.

STAFF RECOMMENDATION: *A sunset date should be placed on these two examinations allowing the Board sufficient opportunity to justify further use of these examinations and to work closely with NCEES on providing an appropriate national examination to meet California requirements. The Board should also seriously consider providing the NCEES land surveyor examination on a one-year trial basis beginning in the year 2001.*

QUESTION #11 FOR THE BOARD: *Please explain why the following state-only examinations are still necessary: (1) a state Structural (Civil) Examination vs. the National (NCEES) Structural Examination I and II; (2) a state Land Surveyors Examination vs. the National (NCEES) Land Surveyors Examination. Please indicate the passage rates for each type of examination (both state and National for each year over the past four years), and the number of states that provide both the National Structural Examinations and Land Surveyors Examination.*

ISSUE #12. IT IS UNCLEAR WHETHER OCCUPATIONAL ANALYSES HAVE BEEN PERFORMED ON ALL TESTS REQUIRED BY THE BOARD WITHIN THE PAST FIVE YEARS.

BACKGROUND: Occupational analyses and exam validations are critical components of appropriate and legally defensible licensure programs. Both types of reviews help the state ensure that the standards for entry into professions are consistent with the skills required in those professions. Various court decisions have established that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of “job-relatedness.” According to the U.S. District Court, this standard requires periodic validation of each examination a candidate is required to take. While the courts have not specified a standard for periodic review, a recent California case (*AMAE, et.al. vs. California Commission on Teacher Credentials*) has indicated that an analysis performed five or more years prior does not provide a sufficient defense to its validity. Therefore, it would appear as if courts may now invalidate an examination if an occupational analysis has not been performed within five years, and will find it unrelated to current knowledge, skills, abilities necessary for the profession.

It is unknown whether all of the examinations provided by the Board are meeting this requirement. And if not, what plans the Board has to update their examinations with an occupational analysis.

QUESTION #12 FOR THE BOARD: *Please indicate if all examinations provided by the Board have had an occupational analyses performed within the past four years, and if not, by what date the Board expect these analyses to be performed. (Please provide a breakdown of all examinations and when the occupational analyses were performed.)*

ISSUE #13. IT IS UNCLEAR WHY THE BOARD WAS, OR WHETHER IT IS CURRENTLY INVOLVED, IN CONTROVERSIAL POLITICAL CAMPAIGN INITIATIVES THAT DO NOT APPEAR TO RELATE TO CONSUMER PROTECTION OR COMPETENCE OF ENGINEERS.

BACKGROUND: On March 29, 1996, the Board voted to oppose the “Government Cost Savings and Taxpayer Protection Amendment” and sent a letter to the Governor advising him of the Board’s opposition. This purpose of this initiative was to require competitive bidding, cost comparisons and contractor liability for state-funded engineering and design contracts over \$50,000. This was a highly controversial issue between private and public sector engineers. It was argued by Professional Engineers in California Government (PECG), that the board should have taken no position on this initiative and that at least one of the members of the Board appeared to have some financial stake in the outcome of the measure. PECG requested the FPPC to at least investigate the conduct of this one voting member.

There is another initiative that is now being proposed by the Consulting Engineers and Land Surveyors of California (CELSOC). CELSOC primarily represents private civil engineering firms. The initiative is titled the “Fair Competition and Taxpayer Savings Act.” This initiative also involves issues of competitive bidding for engineering services by local agencies. PECG is opposed to this initiative.

It is unclear if the Board is involved in any discussions, or if it has taken any positions, regarding this recent initiative proposed by private sector engineers. It is also unknown why the Board became involved in the earlier initiative supported by public sector engineers and voted to oppose it, since this initiative did not seem to involve issues related to consumer protection or the competence of engineers.

QUESTION #13 FOR THE BOARD: *Please indicate why the Board voted to oppose an initiative on the ballot dealing with competitive bidding of engineering contracts, and whether it has taken any other positions or had discussions involving a more recent ballot initiative involving the same issue.*

ISSUE #14. THE BOARD IS PROJECTED TO HAVE A BUDGET DEFICIT BY FISCAL YEAR 2001/02.

BACKGROUND: The Board has projected that its fund reserve will experience a deficit by fiscal year 2001/02. It indicates that it has not raised its licensing and examination fees within the last ten years to keep up with increased costs. Also, in FY 1994/95 to FY 1997/98, it experienced an average yearly decline in application fee revenue of ten percent, or \$221,000 per fiscal year. The Board is now in the process of preparing fee increase legislation to be introduced in the year 2000.

It was indicated by the Center for Public Interest Law (CPIL), that during the Board’s meetings in 1998, it was considering other alternatives that could save the Board \$350,000 per year as opposed to having to increase licensing fees. One of the proposals was to require examinees to pay the full cost of their licensing examinations rather than having licensing fees subsidize these costs.

QUESTION #14 FOR THE BOARD: *Please explain what alternatives the Board has considered to deal with its projected budget deficit. Has the Board considered other alternatives such as requiring applicants for licensure to pay the full costs of the Board in processing applications and providing examinations?*

ISSUE #15. SHOULD THE BOARD BE CONTINUED ALONG WITH ITS CURRENT MEMBERSHIP, OR SHOULD THE MEMBERSHIP OF THE BOARD BE CHANGED OR RECONSTITUTED, OR ITS RESPONSIBILITIES TRANSFERRED TO THE DEPARTMENT OF CONSUMER AFFAIRS AND AN ADVISORY COMMITTEE ESTABLISHED?

BACKGROUND: During the Board's prior review in 1996, the Center for Public Interest Law (CPIL) recommended to the Joint Committee that the Board be abolished and all of its responsibilities be transferred to the Department. It indicated a number of failures and problems with the Board, including most of those already identified in this paper.

Recently, CPIL once again reviewed the activities of this Board and will present its findings in the next issue of the California Regulatory Law Reporter ("Reporter") (The "Reporter" is generally presented by CPIL three times per year and provides information concerning activities and issues related to the conduct of several consumer boards, including this Board.)

CPIL released a draft of its comments to the Joint Committee and raises concerns that this Board has only addressed some of the less complex issues identified by the Joint Committee back in 1996 and has devoted attention to other less significant issues, such as proposing amendments to delinquent reinstatement regulation and its rule governing the contents of the engineers stamped seal.

As indicated by CPIL, the Board has not as yet addressed the Joint Committee's instructions and recommendations regarding its title acts, the "supplemental work" concept, or even the low passage rate of its land surveyor examination.

STAFF RECOMMENDATION: *No recommendation at this time. However, the Joint Committee and the Department should give serious consideration to either eliminating this Board or reconstituting its membership if the Board will not be able to adequately resolve the issues presented in this background paper.*

QUESTION #15 FOR THE BOARD: *Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn't a bureau under the Department of Consumer Affairs, with an advisory committee to the Department, administer this licensing program more effectively and efficiently than the current Board?*

PART 5.

The Board for Professional Engineers and Land Surveyors

BOARD'S RESPONSE TO ISSUES AND RECOMMENDATIONS FROM 1999/2000 SUNSET REVIEW

The following are the questions presented by the Joint Legislative Sunset Review Committee in its JLSRC's Background Paper for the November 30, 1999, hearing and the California Board for Professional Engineers and Land Surveyors' response to each question. Please note that we have updated the responses to include information regarding the Board's discussions and actions at its December 16-17, 1999, meeting.

ISSUE #1. ALTHOUGH THE BOARD WAS UNABLE TO RECEIVE THE LEGISLATURE'S, OR THE ADMINISTRATION'S APPROVAL FOR ITS PROPOSAL TO REWRITE THE ENTIRE PROFESSIONAL ENGINEER'S ACT, THERE MAY STILL BE CHANGES TO SPECIFIC SECTIONS OF THIS ACT THAT ARE STILL NECESSARY.

1. Please provide a brief overview of the efforts of the Board to rewrite the Professional Engineers Act, and why the Board was unable to generate support and provide sufficient justification for this proposal. Were there concerns raised by others which the Board was unable to address? Are there still changes proposed in its PE Act Rewrite that should still be considered by the legislature to either clarify or update the act?

In 1997, after many informational forums and meetings regarding revisions to the Professional Engineers Act, the Board introduced Assembly Bill 969 by Assemblyman Cardenas. This proposal, known as the PE Rewrite, updated the way engineers are registered, clarified the Professional Engineers Act, and arranged the information in a more orderly fashion. Because of the complex issues and the amount of information in the bill, AB 969 became a two-year bill.

When AB 969 was scheduled for its first policy committee hearing, the committee and the author requested that the Board reduce the bill in scope to address only the most important issue.

Although the Board believed all of the proposed revisions were necessary, it determined that the issue needing immediate attention was the unnecessary title act regulation in the engineering profession – one of the recommendations of the JLSRC. Therefore, the first step to updating and clarifying the PE Act became elimination of the title act branches of corrosion, quality, safety, and traffic engineering.

The main reason for discontinuing these four branches was that few states, if any other than California, recognize these branches. There are no national examinations for those titles, nor are there any accredited degree programs in those branches at any universities; there are a small number of candidates for examination in these titles; and there are no enforcement cases involving practice in these branches of engineering. Given these factors and the costs of developing and administering the examinations and the opinions of the entities that hire such engineers, it was apparent that deregulating these branches of engineering would not endanger the health, safety, property, or well-being of California consumers.

When AB 969 was heard in the Assembly Consumer Protection, Governmental Efficiency & Economic Development Committee, the Committee decided that California's densely populated cities, complex transportation systems, varying terrain and seismic instability make continuing the restriction of the use of the title of Traffic Engineer important to California consumers. The bill was amended to continue regulation of the traffic engineering title. AB 969 passed both houses and was signed by the Governor. As chaptered, it eliminated the restriction on the use of the corrosion, quality, and safety titles as of January 1, 1999.

The Board is committed to continuing a licensing program that appropriately safeguards the life, health, property, and public welfare of Californians. We believe that regulation of engineering practice is necessary and effective in protecting the public safety and that eliminating three California-specific title act restrictions and examinations is a good beginning towards clarification and simplification of the regulatory process.

The Board still believes in many issues that it sought to address in the PE Rewrite such as:

- Allow for supplemental practice for electrical and mechanical engineers.
(Please see response to Issues #2 and #3)
- Authorize the Board to adopt, by regulation, a code of professional conduct in order to better serve the professionals and protect the consumers – this would also apply to the Professional Land Surveyors' Act.
(Please see response to Issue #8)
- Allow the Board to examine other engineers in addition to civil engineers on seismic requirements in order to better safeguard the consumer. This ties in with allowing supplemental practice for electrical and mechanical engineers.
- Clarify and further define the Board's authority to take action against a licensee or unlicensed individual in order to better serve the consumers, the public, and the licensees – this would also apply to the Professional Land Surveyors' Act.

UPDATE: *At its December 16 and 17, 1999, meeting, the Board voted to move forward with legislation to make "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act. Some of the amendments include adding fires, floods, and riots along with earthquakes in the "immunity for professional engineers in case of a declared emergency" section of the Professional Engineers Act; re-organizing and clarifying the disciplinary action and misdemeanor sections in both the Professional Engineers Act and the Professional Land Surveyors' Act; clarifying that the use of abbreviations, such as PLS, to represent oneself as a licensed land surveyor is restricted to licensees; and clarifying that*

applicants for professional licensure are to be tested on the provisions of the licensing laws and board-adopted regulations, rather than on a plain language pamphlet addressing those laws and regulations.

ISSUE #2. DOES THE BOARD STILL NEED TO EVALUATE THE NEED FOR TITLE ACTS FOR SPECIFIED BRANCHES OF ENGINEERING.

2. Please explain why the Board still believes that the certain title acts should be practice acts, and what attempts the Board has made to evaluate the need to continue with individual title act disciplines? Does the Board believe that a more thorough and objective analysis on the need to continue with the individual title acts should be performed as recommended by JLSRC staff?

STAFF RECOMMENDATION: *The Board should consider using an independent professional consulting firm to perform a more thorough and objective analysis on the need to continue with the individual title acts, and provide other recommendations it may have to eliminate title acts which may no longer be recognized by other states and the NCEES.*

One of the problems the Board faces in trying to resolve the issue of title acts is how does only protecting the title and not the practice protect the public health, safety, and welfare. In our role of protecting the consumer, the solution seems to be quite simple: if the practice impacts the public health, safety, and welfare, then both the title and the practice should be regulated; however, if there is no need for consumer protection, then the Board should not be regulating either the title or the practice. This sounds very simple. However, as Senator Greene, former Chairman of the JLSRC advised us prior to and during our efforts to rewrite the Professional Engineers Act, you lose either way. In the first alternative, unregulated individuals will argue that they lose their chosen livelihood if an attempt is suddenly made to regulate the practice after more than 20 years of only regulating the title. In the second alternative, you would be taking away something (the right to use a title) from a person who has earned the right to hold a distinction that may provide a function to industry and employers.

The major reason for not performing a thorough analysis based on the previous committee recommendation is that we are committed to working with both Department of Consumer Affairs (DCA) and the JLSRC. The prior administration at DCA said that, in as much as they would like the Board to “get rid of title act registration,” they would not support the Board in any legislation to do so. Senator Greene, as the previous chairman of the JLSRC, also indicated that he would not be supportive of the elimination of the other title acts. Given the past criticisms of this Board, we did not believe that it would have been prudent to go out on our own and conduct a study without the support and input from either of these parties. However, since the last review of this Board was conducted, both the administration of DCA and the membership of the JLSRC have changed. Although the Board has not formally considered using an independent professional consulting firm to perform the analysis, we believe that the Board would be very open to this if both DCA and the JLSRC support this effort. We will be discussing this suggestion at our next Board meeting scheduled for December 16 and 17, 1999.

UPDATE: At its December 16 and 17, 1999, meeting, the Board voted to move forward with the JLSRC's recommendation to hire a consultant to perform an in-depth analysis of the title acts, specifically focusing on which ones should be deregulated and which ones should become practice acts. The Board continues to believe strongly that the current method of only restricting the title but not the practice does little, if anything, to protect the citizens of California.

ISSUE #3. A MAJOR ISSUE IS STILL UNRESOLVED CONCERNING WHAT SUPPLEMENTAL OR INCIDENTAL ENGINEERING WORK SHOULD BE ALLOWED WITHIN THE PRACTICE AREAS OF CIVIL, ELECTRICAL AND MECHANICAL ENGINEERING.

3. Please explain the issue of overlap and supplementary practice being performed by engineers and why the Board recommends that it only occur within the branches of civil, electrical and mechanical engineering. Please respond to the recommendations of staff concerning this issue.

STAFF RECOMMENDATION: *The state should legally recognize that overlap (or supplemental) engineering work occurs between the different disciplines of engineering and that some overlap should be allowed as long as the engineer is competent (based on education, training and experience) to perform the engineering work. This would include engineering work that overlaps into the licensed practice areas of civil, mechanical and electrical engineering, but that overlap into these areas should be restricted to projects or activities that are related to the engineers registered branch of engineering. The Board should not have to define in regulations permissible supplementary practice, or which specific tasks or activities professional engineers can and cannot be performed.*

Proposed Legislation Recommended by Staff:

(1) Amend Section 6737.2 to recognize practice overlap:

"It is recognized that there are areas of practice among the different disciplines and branches of engineering, regulated by the Board, that overlap and must be accommodated. Registrants under this chapter may engage in practice in another branch or discipline regulated pursuant to this chapter only to the extent that such persons are by education and/or experience fully competent and proficient. As such work may be in connection with or supplementary to the work of the professional engineer on a specific project or activities related to their registered branch of engineering, it shall not be necessary for the Board to define in regulations permissible supplementary practice, or which specific tasks or activities professional engineers can and cannot perform."

(2) Amend regulations to delete the following sentence within the definitions of title act branches so that supplemental engineering work is permissible:

"The above definition of (Title) engineering shall not be construed to permit the practice of civil, electrical or mechanical engineering."

(3) Definitions of Incompetence and Negligence:

Incompetence: *The term "incompetence" shall mean the execution of acts demonstrating errors and/or omissions in the professional work of a licensee in this Act, which, taken as a whole, displays a pattern of lack of knowledge and understanding of, or the inability to apply the principles and intellectual tools of the applicable discipline or the fundamentals of engineering. Such patterns may be revealed in one project or in a series of projects for which the individual had responsibility.*

Negligence: *The term “negligence” shall mean the execution of acts demonstrating errors and/or omission in the professional work of a licensee in this Act, which is of a sufficiently serious nature to create clear danger to the lives of, and safety of builders, users, or the public, or of property, or monetary damage or loss. Negligence, under the terms of this Act, applies to situations where it can be demonstrated that the error or omission is occasioned not by lack of knowledge on the part of the professional, but on lack of due care in accordance with accepted engineering practices.*

[Rather than appearing in statutory form, these definitions could be placed in regulation and adopted as part of the rules of professional conduct for engineers.]

(4) Include the following as unprofessional conduct:

“Section 6780. It is unprofessional conduct for a person licensed under this chapter to perform, or hold himself or herself out as able to perform, engineering services in a branch of engineering other than that branch in which the registrant has demonstrated proficiency by registration, unless fully competent and proficient to perform the work, and such work is in connection with or supplementary to the work of the professional engineer on a specific project or activities related to his/her registered branch of engineering.”

(5) Amend Section 6787 (misdemeanor violations) to include the following:

“Who shall perform, or offer to perform civil, electrical or mechanical engineering work who is in violation of Section 6780.”

In order to respond to the recommendations of staff concerning this issue, we must first clarify some of the information contained in the JLSRC’s Background Paper.

In AB 969, the Board had proposed to allow supplemental work between electrical and mechanical engineers. However, due to confusion over the meaning of the word “supplemental,” it was strongly recommended that the Board drop this issue from our proposed legislation. The Board did drop it from the bill, although not of its own choosing, which is why this issue has been labeled as “unresolved.”

The JLSRC’s Background Paper states “a licensed structural engineer is required in the building of schools and hospitals, and local agency building codes require a licensed civil, mechanical, or electrical engineer for a variety of fixed works type projects. There are many other instances in which the state and local jurisdiction determines the particular type of engineer to be used.” This is incorrect and seems to be used as a justification for changing the way in which we regulate professional engineers. Local agencies are not allowed to specify the type of licensee who performs work. Business and Professions Code section 460 prohibits local agencies from preventing a licensee from performing the work he is licensed to do. Therefore, if a professional engineering license allows the holder to perform a specific type of engineering, the local agencies are barred by law from deciding which type of licensee could do the work. Furthermore, the Enforcement Unit of the Board has encountered instances during its complaint investigations in which the local agencies reviewing plans have been unconcerned with which type of licensee has done the work or even if a licensee has been involved. State law does provide that only structural engineers can design public schools or hospitals – these are state restrictions, not restrictions placed by local agencies.

The following is in response to the specific questions and recommendations.

Currently, civil engineers are the only registrants who can perform work in any of the other branches of professional engineering. Business and Professions Code section 6737.2 allows supplemental work by a civil engineer as long as the work is incidental to or in conjunction with civil engineering work or study. For many years, civil engineers have provided and continue to provide sound supplemental engineering work in other branches as evidenced by the lack of enforcement cases filed against civil engineers involving supplemental work.

Because the practices of civil, electrical, and mechanical engineering are regulated, the Board supports the concept of civil, electrical, and mechanical engineers performing work in other disciplines that is incidental to work in their own discipline, as long as they are competent in these areas based on education, training, and experience. This would reduce the number of gray areas between the practice of similar or related engineering disciplines.

However, if the supplemental work concept were extended to any of the title act branches of engineering, protection for California's consumers would suffer. If a title act engineer is found to be incompetent, the strongest disciplinary action available to the Board is to revoke that engineer's registration. Revocation only prohibits the use of the title. It is still legal for the person to perform the same engineering work. If public safety is an issue, only the practice acts allow a range of disciplinary actions that can offer consumer protection.

Proponents of overlap and supplemental practice between the title act and practice act disciplines claim that all professional engineers are competent in all areas of practice by virtue of their education and experience. However, this is not correct. There are dozens of different kinds of engineering degrees awarded by universities through the country. The curriculum for a chemical engineer versus that of a civil engineer or an electrical engineer is so vastly different that more than 50 percent of the classes are not recognizably similar. Engineers in the different branches perform very different work; in many instances, so different that they are really different professions. It would be hard to imagine an electrical engineer or nuclear engineer or fire protection engineer being able to competently practice civil engineering without receiving additional substantial formal education in civil engineering. Perhaps more importantly, and this is true throughout the entire United States, there is no common licensing examination that is taken by all branches of engineering. In other words, unlike doctors and lawyers, a civil engineer takes a different test than does an electrical or mechanical or nuclear engineer.

Senate Bill 191 is recent legislation that the sponsors state will allow for supplemental overlap between the various branches of engineering. Unfortunately, the bill does more than that, and we believe it is important to address this proposed legislation at this time to illustrate the problems with addressing supplemental overlap before the issue of title acts versus practice acts is resolved. SB 191 was introduced in January of 1999 and has not yet made it out of a committee. SB 191 is identical to SB 2069, which was introduced in 1998 and did not pass out of its first legislative committee. For the past two years the Board has been concentrating on trying to understand and provide suggested amendments for these two bills.

The first area of concern with SB 191 is the proposed addition of Section 6730.3 to the Professional Engineers Act. The language will allow for overlap by **any** engineer — regardless of the branch or title in which he or she was examined — into the branches of civil, electrical, or mechanical engineering if competent and proficient as determined by education or experience. However, those engineers would only be permitted to use the title of the branch in which they

were registered. In other words, an engineer whom we register only by title would be able to practice civil, electrical, or mechanical engineering without ever having demonstrated or been examined for competence in that area.

Furthermore, while SB 191 seems to make just one change by allowing for overlap between the branches of engineering, in reality the bill either creates up to 15 new practice acts of engineering **or** totally deregulates all branches of engineering.

Following meetings with the sponsors of the bill, it is very unclear to the Board what they are attempting to achieve with this bill. The sponsors seem to be striving to regulate the entire scope of engineering via generic registration, but the format being pursued in SB 191 is not generic registration. Generic registration allows for the regulation of the practice of each branch of engineering; it does **not** regulate the practice of some branches and the title of other branches.

Moreover, under the most literal reading, the bill will deregulate the entire practice of engineering by allowing only for title act registration, thereby leaving regulation up to local agencies — the state's individual cities and counties. The Board strongly believes that having 58 sets of rules among California's counties, and hundreds of other sets of rules among the cities, will hold engineers in different areas of the state to greatly-varying standards. The Board's statutory mandate is to protect the public health, safety, and welfare. SB 191 will eliminate all avenues of consumer protection.

Lastly, SB 191 fails to recognize the distinction between practice acts and title acts and does not acknowledge the title authorities of structural engineering and geotechnical engineering. Under current law, for example, the Health and Safety Code and the Education Code, respectively, require that any person designing a hospital or a public school must be a registered structural engineer. As drafted, SB 191 compromises public safety by attempting to override the legislature's directive that hospitals and public schools be designed only by those who have passed the comprehensive structural engineering examination.

Respectfully, it was and still is the Board's opinion that the addition of one section of law, as proposed in SB 191, does not accomplish the sponsor's objective by overriding all other conflicting sections. The Board supports generic registration, but not in the pure form. Instead, the Board supports quasi-generic registration, where the branch(es) of engineering in which an engineer has been examined is identified and publicized. The **practice** of each branch of engineering would be regulated but some overlap between branches (as determined by education, examination, and experience) would be allowed.

The Board has not yet been able to formally review the language proposed in the JLSRC's Background Paper to recognize practice overlap, to define incompetency and negligence, and to include unprofessional conduct. The Board will do so at its next regularly scheduled meeting in December 1999.

UPDATE: *At its December 16 and 17, 1999, meeting, the Board voted to address the issue of supplemental overlap after the consultant completes its review of the title acts, as addressed in our response to Issue #2. Also at this meeting, the Board reaffirmed its position that it is imperative to deal with the issue of title acts versus practice acts before the issue of supplemental overlap can be appropriately resolved.*

The Board also discussed the JLSRC's recommendation that the Board should define, either through statute or regulation, the terms "negligence" and "incompetency" as used in the Professional Engineers Act and the Professional Land Surveyors' Act. The Board agrees with the recommendation that these terms should be defined but believes that more time should be spent fully discussing with its attorneys, as well as members of the public (consumers and licensees both), the exact wording to be used in these definitions. Since these definitions would be used as the basis for disciplinary action taken by the Board against its licensees, the Board does not believe it should rush to adopt definitions. The Board has directed its Enforcement Committee to begin developing appropriate language, with the assistance of the Board's Liaison Deputy Attorney General. The Board will also be consulting its attorneys, as well as other licensing boards, in order to determine whether these definitions should be included in statute or adopted by the Board as regulations. The proposed definitions will be developed and discussed over the next year so that either legislation may be introduced at the beginning of the next two-year session or regulations may be adopted

ISSUE #4. SHOULD THE BOARD CONTINUE TO BE INVOLVED IN DEFINING THE PRACTICE AREAS OF ELECTRICAL AND MECHANICAL ENGINEERING?

4. Please explain the problems that the Board has encountered in trying to redefine the practice areas of mechanical and electrical engineering. Is the Board still involved in attempts to redefine by regulation the practice areas of mechanical and electrical engineering? Please respond to the staff recommendation to remove the authority of the Board to define these branches of engineering for purposes of restricting the practice of engineers, and to include the current regulatory definitions of engineering and mechanical engineering in statute.

STAFF RECOMMENDATION: *Only allow the Board to define, by regulation, areas of engineering discipline for specified purposes, but not for restricting the area of a registrant's practice. The definitions of electrical and mechanical engineering currently in regulations should be included in statute. Any changes proposed for these definitions should be presented to the Legislature for consideration.*

Proposed Legislation Recommended by Staff:

(1) Amend Section 6717 to read as follows:

"The board may, by regulation, define each branch of professional engineering, other than civil engineering, for purposes of review of experience, selecting the examination to be administered, and defining the areas of examination to be administered, and for ascertaining an engineer's education, experience and competency to practice in that particular branch of engineering or in other branches of engineering. The definitions for branches of engineering shall not be construed to limit the areas of a registrant's practice of engineering."

(2) Amend definitions of electrical and mechanical engineering in California Code of Regulation section 404, into Section 6734.1 ("Practice of electrical engineering") and Section 6734.2 ("Practice of mechanical engineering") of the Business and Professions Code.

Because we are now living in a time when technology is constantly changing, it has become more difficult to define the current practices for professional engineers. To do so without "stepping on the toes" of professions that we do not currently and do not want to regulate is

difficult but could be done with the cooperation among the professions affected. There have been problems in the past with other professions assuming the Board was trying to take over their “turf” when this was the farthest thing from what the Board intended. Because of this erroneous assumption, many other professions have been unwilling to work with the Board to develop appropriate definitions for electrical and mechanical engineering which accurately reflect current practice and do not cross over into non-engineering work.

The Board has not yet been able to formally review the language proposed in the JLSRC’s Background Paper to only allow the Board to define, by regulation, areas of engineering discipline for specified purposes, such as ascertaining an engineer’s qualifications for licensure and determining areas to be examined, nor the recommendation that the existing definitions of electrical and mechanical engineering be moved from regulation into statute. The Board will do so at its next regularly scheduled meeting in December 1999.

***UPDATE:** At its December 16 and 17, 1999, meeting, the Board voted to sponsor legislation to move the definitions of electrical and mechanical engineering from regulation into statute, as recommended by the JLSRC. In order to obtain public comment on the proposed definitions of electrical and mechanical engineering, we have scheduled two public hearings to be held in Sacramento on January 25 and in Los Angeles on January 27. The Board believes that moving the definitions of electrical and mechanical engineering into statute is a good first step. The Board believes that any other changes to the purpose of the definitions of the title act disciplines, such as contained in the JLSRC’s Background Paper, should wait until the independent consultant completes the review of the title acts, as addressed in our response to Issue #2.*

ISSUE #5. THE BOARD’S USE OF “POLICY RESOLUTIONS” AND OTHER OPINIONS TO CLARIFY AREAS OF ENGINEERING PRACTICE HAVE BEEN CONSIDERED AS “UNDERGROUND REGULATIONS.”

5. Please explain the reason and background concerning the use of policy resolutions or other opinions by the Board rather than the use of the regulatory process, to define specific activities or tasks associated with the practice of engineering. Does the Board still plan to interpret areas of practice for civil, electrical, and mechanical engineering without using the regulatory process? Has the Board decided who is ultimately responsible for “plan checking” of engineered buildings and structures? Respond to staff’s analysis and recommendation.

STAFF RECOMMENDATION: *Any policy resolution or other proposals by the Board pertaining to permissible tasks or activities associated with the practice of engineering should go through the regulatory or legislative process. This will ensure the Board has appropriate authority to define a particular area of engineering.*

On this particular issue, in addition to responding to the specific questions, there are numerous statements in the JLSRC’s Background Paper that need to be clarified and corrected. We will address those items before responding to the specific questions.

The JLSRC’s Background Paper refers to “the Attorney General” and memoranda from the “Attorney General” as if they are official Attorney General Opinions. The issue of policy resolutions was not “called into question by the Attorney General’s Office,” as the JLSRC’s

Background Paper states. The Board requested that the Deputy Attorney General assigned as the Board's liaison review the matter of policy resolutions overall. She then prepared a memorandum advising the Board that all of its current policy resolutions should be reviewed and recommended that the Board no longer issue such resolutions until a review of all of the current ones could be completed.

It was at the recommendation of the Board that law enforcement officials sought legislation to clarify the provisions of the Professional Land Surveyors' Act with regard to the mapping of accident scenes. The JLSRC's Background Paper implies that law enforcement officials sought such legislation against the Board's suggestion.

The JLSRC's Background Paper states that "it is not clear why the Board is even involved in this discussion [regarding the new legislation (AB850) dealing with 'qualified safety inspectors' and amusement park rides] at this point in time. The Board had an opportunity to express their concerns during the passage of this measure. (It is not clear if they did so.) The Legislature and the Governor would seem to have addressed this issue." The Board agrees that the Legislature and the Governor have addressed this issue. However, it is part of the Board's mandate to review proposed and newly-enacted legislation to determine how it will affect the Board's operations and to determine if the Board's regulations may need to be adopted or amended to conform to the new statutes. During the passage of AB 850, the Board did send a public letter indicating its support of the concepts contained in the bill and expressing its concerns with the specific language used regarding professional engineers. The Board asked its attorney to review the new statutes and the Professional Engineers Act to determine if there might be a conflict so that the Board would know if any of its existing statutes or regulations need to be amended to conform to the new statutes.

The update of the traffic engineering examination was not done because "there were tasks on the examination that had no relevance," as the JLSRC's Background Paper states, but because it was the scheduled time for the occupational analysis and test plan update. When the Office of Examination Resources' report was submitted to the Board for approval, the Board had concerns with the wording of some of the questions posed in the occupational analysis survey, the results of which were used to determine what types of questions should be included on the examination. The Board felt that some of the questions in the survey could be interpreted as covering areas not included in the definition of traffic engineering and could, therefore, lead to questions being included on the examination that would test on areas not within traffic engineering. Some of the questions which raised concerns seemed to be based more on the definitions of civil engineering or electrical engineering, rather than on the definition of traffic engineering. The Board requested that the questions be reworded and the survey redone.

The following is provided in response to the specific request to explain the "reason and background concerning the use of policy resolutions or other opinions by the Board rather than the use of the regulatory process, to define specific activities or tasks associated with the practice of engineering."

As previously stated in our Sunset Report, in early 1995, the Board for Professional Engineers and Land Surveyors decided to formalize its opinions and policies on various aspects of the Professional Engineers Act, the Professional Land Surveyors' Act, and the Board's regulations, as well as on its own internal management policies, as "Board Policy Resolutions." Before issuing these policy resolutions, the Board's attorneys researched the matter to determine if the Board could do so without adopting the opinions as formal

and binding regulations. Based for the most part on the holdings in Skyline Homes, Inc. v. Department of Industrial Relations [(1985) 165 Cal.App.3d 239], the Board's attorneys opined that policy resolutions would not need to be adopted as formal and binding regulations as long as they (1) are not intended to amend, supplement, or revise any express statute or regulation concerning professionals subject to licensure by the Board; (2) are merely restatements of existing law and are intended only for clarification; (3) are not intended to implement, interpret, or make specific the law enforced or administered by the Board; and (4) are not intended to govern the Board's procedures.

The intent of the Board in issuing policy resolutions was to provide answers to commonly asked questions about existing statutes, regulations, and procedures. The Board did not intend for the policy resolutions to be treated as "new laws" or to be viewed as binding opinions. They were simply to be restatements of existing laws or the only legally tenable statement of law. Unfortunately, members of the professions, consumers, and governmental agencies did not accept them as such and began to treat the policy resolutions as binding laws which would be enforced by the Board. When the Board realized this was happening, it directed its attorneys to again look into the issue of policy resolutions and whether they needed to be adopted as regulations.

While the Board's attorney was researching this issue, the Office of Administrative Law (OAL) issued a determination that the specific subject covered by one policy resolution constituted an underground regulation. It is important to note that OAL did NOT address the general issue of whether policy resolutions are underground regulations; OAL only addressed the specific subject of the policy resolution on the Fields of Expertise between Civil Engineers and Geologists.

The Board's attorney has recently advised the Board that a 1996 California Supreme Court ruling, Tidewater Marine Western, Inc. v. Victoria L. Bradshaw, as Labor Commissioner [(1996) 14 Cal.4th 557], has narrowed the instances in which an agency may issue opinions or procedures without adopting them as regulations. Based on this new ruling, the Board's attorney advised the Board to review all of its existing policy resolutions to determine which ones should be adopted as formal and binding regulations, which ones were no longer necessary, and which ones would still meet the newly narrowed instances in which a regulation would not be needed. The Board directed staff and its attorneys to begin this review and provide recommendations to the Board. The recommendations were made at its September 1999 meeting, when the Board voted to withdraw nine policy resolutions, in addition to two previously withdrawn.

These policy resolutions were withdrawn because the topics addressed are no longer at issue, have already been addressed in regulation or statute, or need to be adopted as a regulation. The remaining eleven are still being reviewed by the Board's attorneys for discussion at the December meeting.

In response to the specific question of whether the Board still plans to interpret the areas of practice for civil, electrical, and mechanical engineering without using the regulatory process, the Board never "planned" to interpret these areas without using the regulatory process; therefore, the Board certainly does not "still plan" to do this. The Board often receives inquiries from licensees and consumers as to whether or not specific actions constitute the practice of civil, electrical, or mechanical engineering or land surveying. The Board responds to these inquiries by citing current statutes and regulations, as well as such things as previously issued

Attorney General Opinions, legal opinions from the Board's own attorneys, and existing case law. When the Board began receiving inquiries involving the same types of questions and inquiries which the Board believed all interested parties would be interested, the Board decided to issue its responses in the form of Board Policy Resolutions. The Board never viewed policy resolutions as a way to avoid the rulemaking process. They were simply intended to be responses to commonly asked questions.

It is difficult to respond to the specific question of whether the Board has decided who is ultimately responsible for "plan checking" of engineered buildings and structures because the Board never questioned this. The implication that the Board adopted a new policy requiring all local government "plan checking" to be conducted under the responsible charge of a professional engineer is incorrect. The statutes of the Professional Engineers Act require that all civil, electrical, and mechanical engineering work be done by or under the responsible charge of a licensee, unless otherwise exempted. There is **no** exemption for local government "plan checking." However, many people working in local government "plan checking" offices believed there was such an exemption. Furthermore, nothing in the Professional Engineers Act requires that **all** "plan checking" be done by or under the responsible charge of a licensee; what is required is that any "plan checking" which constitutes **civil**, **electrical**, or **mechanical** engineering be done by or under the responsible charge of a licensee and that all of the other requirements of the Professional Engineers Act also be met, such as engineering documents being signed and sealed by the licensee in responsible charge. Many local agencies failed to comprehend these distinctions and claimed that the Board, with Policy Resolution 95-01, was now requiring that all "plan checking" be done by or under the responsible charge of a licensee. However, this was not what the policy resolution nor the Professional Engineers Act said at all. Although the Board did revise the actual policy resolution cover statement (hence, the reference to revision 1), it never had a "policy" that all "plan checking" had to be done by or under the responsible charge of a licensee. The Board was always of the opinion that if the process of "plan checking" engineering documents requires the individual doing the checking to make independent engineering analyses and judgments, then that person must either be appropriately licensed or working under the responsible charge of someone who is and must meet all of the other requirements of the Professional Engineers Act. This is not "new law," as many plan checkers and building officials claimed; the Board was simply pointing out exactly what the law already required. There was never any question as to who was "ultimately responsible for the 'plan checking' of engineered buildings and structures." The law requires civil and structural engineering work to be done by or under the responsible charge of a licensed civil engineer and makes no exemption for "plan checking" if that work involves professional civil engineering analysis and judgment.

The Board agrees that changes to the definitions of the different branches of engineering and land surveying should be done through the regulatory or legislative process, as appropriate. As previously explained, it was never the Board's intent to circumvent the regulatory process. The Board believed that its policy resolutions were simply restatements of existing laws and regulations and, therefore, did not need to go through the regulatory process. When the Board learned that new case law had greatly narrowed the scope of information which could be provided to the public without going through the rulemaking process, it stopped issuing policy resolutions and directed its attorneys to review all of the existing ones to determine how best to deal with them. The Board believes that one of its duties is to provide information to both its licensees and the consumers regarding the laws and regulations that the Board must enforce.

UPDATE: At its December 16 and 17, 1999, meeting, the Board voted to withdraw the remaining eleven policy resolutions. The Board's attorneys advised the Board that most of these policy resolutions could be addressed through the regulatory process should the Board determine that the specific issue still needs to be addressed. The Board directed its staff to provide specific recommendations at the February 24 and 25, 2000, meeting regarding which, if any, of the former policy resolutions should be adopted as regulations.

ISSUE #6. THE BOARD'S POLICY AGAINST INVESTIGATING FEE DISPUTES HAS BEEN REGARDED AS AN "UNDERGROUND REGULATION."

6. Please explain whether the Board has jurisdiction regarding fee disputes between engineers and consumers. Does the Board investigate complaints from the public regarding fee disputes, if so, what action is taken by the Board?

The Board is prohibited by law from regulating the fees charged by its licensees. Business and Professions Code section 129(c) states "the Board shall, when the Board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint. *Nothing in this subdivision shall be construed as authorizing or requiring any Board to set or to modify any fee charged by a licentiate.*" (Emphasis added.) The Board can, and does, investigate complaints and take disciplinary action against its licensees for breach (or violation) of contract, fraud, deceit, misrepresentation, negligence, incompetency, and aiding and abetting in the licensees' professional practice. However, if the only issue between the licensee and the consumer is the amount of fees being charged by the licensee, the Board cannot get involved.

If a complaint from a consumer is received regarding the fees charged by a licensee, the complaint is investigated to determine if a breach of contract occurred or if there was any fraud, deceit, misrepresentation, negligence, or incompetency involved on the part of the licensee. However, if the investigation reveals that the issue is simply a dispute between the parties as to how much the licensee's fees should be, the Board does not have any jurisdiction to take disciplinary action against the licensee. In such a case, the consumer would be advised to seek private legal advice regarding any remedies through the civil courts, including small claims court. This can be a benefit to the consumers because in a civil action the scope of the potential damages is probably greater than what would be available in an administrative hearing and the burden of proving such damages is less.

ISSUE #7. SHOULD THE BOARD PURSUE AUTHORITY TO ADOPT A WRITTEN CONTRACT REQUIREMENT?

7. Explain whether the Board has made any attempts to require a written contract for engineers, and if not, why not?

STAFF RECOMMENDATION: *The Board should pursue legislation to adopt a written contract requirement for engineers.*

The Board has not consistently “refused” to require a written contract, as stated in the JLSRC’s Background Paper. In the past, the Board has opposed legislation requiring that its licensees (land surveyors as well as engineers) have a written contract because of concerns with the specific language proposed in the legislation. In the future, the Board will be discussing the possibility of requiring written contracts. Language has recently been added to the Architect’s Practice Act requiring written contracts for architects. The Board will be reviewing this language, as well as language from other professions and from other states, in order to determine how well such a requirement might work for the consumers of professional engineering and land surveying services.

UPDATE: At its December 16 and 17, 1999, meeting, the Board voted to follow the JLSRC’s recommendation and will be sponsoring legislation this year to require written contracts for professional engineering and professional land surveying services. The Board decided to model its proposed language on the language in the Architect’s Practice Act.

ISSUE #8. SHOULD THE BOARD PURSUE THE DRAFTING OF A PROFESSIONAL CODE OF CONDUCT AND ETHICS FOR THE PRACTICE OF ENGINEERING.

8. Has the Board pursued the adoption of professional standards and conduct for the practice of engineering? Does the Board have the authority to adopt such standards and rules through the regulatory process?

STAFF RECOMMENDATION: *The Board should seek authority, if necessary, to adopt a professional code of conduct and ethics for the practice of engineering. It should also be “unprofessional conduct” to violate any standards or rules as promulgated by the Board.*

Proposed legislation recommended by staff if necessary: include the following language in the Professional Engineers Act:

“The board, by regulation, shall adopt rules of professional conduct to maintain a high standard of integrity in the engineering profession, taking into consideration the rules and standards of professional practice adopted by national engineering societies and other states. It shall be unprofessional conduct to violate any rules of professional conduct.”

The Board has been advised by its DCA attorneys that it does not have the statutory authority to adopt a code of professional conduct through the regulatory process. When the Board was discussing the proposed rewrite of the Professional Engineers Act, the Board decided to include language which would give it the necessary statutory authority to adopt regulations in the future. This proposal was also included in the Board’s original Sunset Review Report. However, when that proposal was reviewed, the JLSRC recommended that this authority should only be granted after the specific language for the code of professional conduct was reviewed by the Committee. At that same time, the Board was strongly advised by the DCA administration not to pursue this issue further.

Adopting a code of professional conduct has been a goal of the Board for several years. It was only because of the opposition from other entities that Board dropped this issue. The Board is encouraged that the JLSRC is supportive of the Board seeking the needed statutory authority to

adopt a code of professional conduct. The Board looks forward to proceeding with legislation to give it the authority to adopt codes of professional conduct for professional engineers and professional land surveyors. The specific language proposed in the JLSRC's Background Paper will be reviewed at the Board's December 1999 meeting.

***UPDATE:** At its December 16 and 17, 1999, meeting, the Board voted to follow the JLSRC's recommendation and sponsor legislation this year to amend both the Professional Engineers Act and the Professional Land Surveyors' Act to give the Board statutory authority to adopt by regulation a code of professional conduct. The Board will base its proposed statutory language on the language recommended by the JLSRC as well as language used by both the California Architects Board and the Board of Registration for Geologists and Geophysicists.*

ISSUE #9. PROBLEMS AND CONCERNS REGARDING THE BOARD'S ENFORCEMENT PROGRAM.

9. Please explain the following: (1) Why does this Board spend almost \$2.8 million (FY 1998/99) on so few complaints referred for disciplinary action? (2) Why has there been an increase in the time it takes to investigate and prosecute cases? (3) Why does this Board make little use of its cite and fine authority? (4) Please provide an update on action taken by the Board regarding the surface sinkage of the Los Angeles subway tunnel.

(1) The question as to why the Board spends almost 2.8 million "on complaints" is a mischaracterization because not all of that money is spent on complaints. In addition to pursuing and investigating complaints, the Board provides both written and oral information to the public and licensees. The Board's enforcement program has two goals: 1) to deter violations of the Professional Engineers Act and the Professional Land Surveyors' Act before they occur, and 2) to take action against licensed and unlicensed individuals who have violated the law. In fulfilling its first goal, the Board publishes and distributes a consumer guide, the handbook of laws and rules, a roster of its licensees, and newsletters three times a year. In addition, the Board has an Enforcement Outreach Program in which staff and technical experts visit local and state agencies to assist them with potential enforcement activities and advise them of how and when the Board gets involved in enforcement activity. The Board also maintains a comprehensive website that contains information on how to file a complaint, the complaint form, as well as the publications previously described. More recently, the Board implemented the license look-up section on its website. Numerous compliments from consumers, licensees, cities, counties, and state agencies have been received regarding this new service. Prior to this, they would have either had to rely on an out-dated hard copy of the roster or call the Board to obtain information on a licensee. The Board's Enforcement Unit also oversees the examination subversion program in which potential and actual issues regarding examination security are investigated and finalized.

(2) There are many reasons why complaint cases have aged as much as they have in the past year. Most of the cases the Board receives are very technical in nature and must be reviewed by an independent technical expert. Technical experts are licensees who review cases for the Board in their spare time away from their own business. Because of the recent boom in the economy, many experts have had less time to spend on work for the Board and, therefore, are taking longer to review the cases and prepare their reports. Some have even advised us that they can no longer devote the time needed to be an expert for the Board. This can cause delays in the processing of

cases due to the need to locate an appropriate expert to review the case. Another major factor that has caused the cases to age is staff turnover. In the last year, two of the Enforcement Unit staff left for other jobs. Replacements had to be hired and trained, not only on the complaint investigation procedures, but also on the laws and regulations relating to professional engineering and land surveying. The Enforcement Unit is now fully staffed and the case processing is back on track. Staff is focusing the majority of its attention on the oldest cases; however, we do not want to solely focus on those to the detriment of the newer cases.

(3) So far this fiscal year, for the months of July through October, six (6) citations have already been issued. The Board does not believe it would be appropriate to “cite first and ask questions later.” Each complaint must be fully investigated and evaluated before the decision whether to issue a citation can be made. The Board also believes that if the subject of the investigation immediately and cooperatively comes into compliance on a first offense, a citation may not be appropriate. There was also some confusion as to what could be ordered in the citation, based on the language in the original regulations adopted by the Board. Based on a review of the citation regulations of other DCA boards and programs, the Board decided to amend its regulations to clarify that a citation may contain both an order to pay an administrative fine and order to abate by correcting the violation. We believe the proposed amendments will provide more options in using the citation program. This rulemaking file has just been submitted to the Office of Administrative Law for final review and approval.

UPDATE: *The Office of Administrative Law approved the proposed rulemaking, and the amendments went into effect on January 1, 2000.*

(4) Since the Board’s case regarding the professional engineering work allegedly involved in the surface sinkage of the Los Angeles Metropolitan Transit Authority subway tunnel is still pending administrative adjudication, it is not appropriate for us to provide specific details. However, we can tell you that an Accusation in this matter was filed on January 29, 1997. Following the filing of the original accusation, the respondents provided additional information as part of discovery. The Deputy Attorney General handling the case requested additional investigation and technical expert review based on this discovery information. An Amended Accusation was filed on September 9, 1999, based on this further investigation and review. The Amended Accusation has been served on the respondents, and a hearing will be scheduled by the Office of Administrative Hearings. Because this investigation involved numerous parties (such as engineers, contractors, attorneys, and local, state, and federal agencies) and civil litigation and investigations by other agencies, it has been very difficult to obtain some of the information necessary for us to complete our investigation. Based on some information provided to the Deputy Attorney General, it appears that our Board is the only agency continuing to pursue this entire matter. No criminal charges were filed against anyone involved, even after a federal grand jury was convened; the civil litigation seems to have been settled; and it is unknown to us whether the Contractors State License Board was ever involved in any investigation of the contractors involved.

We would also like to address the comments in the JLSRC’s Background Paper regarding the information reported by the Los Angeles Times newspaper. Unfortunately, as often happens when dealing with the media, the information provided by our staff to the Times reporter was misreported in his articles. We advised the reporter that unlicensed individuals are allowed to practice civil engineering under the responsible charge of licensees and that we would have to fully investigate the situation to determine if there were appropriately licensed individuals in responsible charge. However, the complete response to the question posed by the reporter was

not included in the article. The reporter may have stated that the Board could not give an opinion regarding whether or not the work being done needed to be done by a licensed engineer. However, what we really told him was that we could not give an opinion without fully investigating the actions first.

The JLSRC's Background Paper also implies that information has not been provided to the JLSRC's staff regarding the status of this matter. The Board's staff has always responded to the JLSRC's consultant's requests for information in the same manner it would respond to any request for public information regarding on-going complaint investigations. When the Accusation was filed and became a matter of public record, it was provided to the consultant. Now that an Amended Accusation has been filed and has become a matter of public record, it will also be provided to the consultant.

UPDATE: *A copy of the Amended Accusation is included with this submittal. A hearing on these allegations has not yet been scheduled. The attorneys for the respondent engineers have advised the Deputy Attorney General that they will be providing additional discovery information and would like to meet to discuss the information prior to scheduling a hearing.*

ISSUE #10. HAS THE BOARD EXAMINED THE IMPACT OF THE INTERNATIONAL BUILDING CODE ON ENGINEERING PRACTICE?

10. Has the Board examined the impact of the implementation of the international building code on engineering practice in this state?

The Board examines the impact of implementing all relevant code changes. For instance, the Board's Examination Development Unit is now in the process of reviewing the 1997 Uniform Building Code (UBC). The California Building Standards Commission (CBSC) is the agency responsible for the adoption of codes for use in California. In 1999, the CBSC adopted the 1997 Uniform Building Code and the California Amendments for use in California. These codes will be in use until the international codes are adopted.

The 1997 UBC contains significant changes in engineering calculations that will affect the Board's Seismic Principles, Structural, and Geotechnical engineering examinations. The Board has scheduled examination development meetings for the early part of 2000 to review the effects of the new UBC on the test plan for these three examinations. The test plans will be revised as required to implement the 1997 UBC. In addition, the Board will provide information to its licensees through its newsletters and website on the impact of the code changes and how and where to find more detailed information on these changes. When the international codes are adopted for use in California, the Board will utilize the same procedure for updating its examinations and providing information to its licensees.

ISSUE #11. IT IS UNCLEAR WHETHER CERTAIN STATE-ONLY EXAMINATIONS PROVIDED BY THE BOARD ARE STILL NECESSARY.

11. Please explain why the following state-only examinations are still necessary: (1) a state Structural (Civil) Examination vs. the National (NCEES) Structural Examination I and II; (2) a state Land Surveyors Examination vs. the National (NCEES) Land Surveyors

Examination. Please indicate the passage rates for each type of examination (both state and National for each year over the past four years), and the number of states which provide both the National Structural Examinations and Land Surveyors Examination.

STAFF RECOMMENDATION: *A sunset date should be placed on these two examinations allowing the Board sufficient opportunity to justify further use of these examinations and to work closely with NCEES on providing an appropriate national examination to meet California requirements. The Board should also seriously consider providing the NCEES land surveyor examination on a one-year trial basis beginning in the year 2001.*

The following chart indicates the passage rates for the National Council of Examiners for Engineering and Surveying (NCEES) structural examinations (Structural I and Structural II, the California Structural Examination (CA Structural), the NCEES land surveying examination (NCEES PLS), and the California land surveying examination (CA PLS). The California structural examination is only offered in October; the California land surveying examination is only offered in April.

	April 96	Oct 96	April 97	Oct 97	April 98	Oct 98	April 99
Structural I	22%	24%	60%	51%	43%	45%	49%
Structural II	9%	30%	16%	15%	7%	19%	13%
CA Structural	N/A	21.4%	N/A	26%	N/A	26.1%	N/A
NCEES PLS	62%	63%	63%	52%	67%	58%	62%
CA PLS	15%	N/A	23.2%	N/A	1.9%	N/A	14.4%

Briefly, the NCEES Structural I and Structural II are not measuring the same level of competency as the California Structural Engineering examination. This is discussed in more detail on Pages 53 through 57 of the 1998 Sunset Report. In California, to become a structural engineer, one needs three years of structural engineering experience after the examination he or she passed to become a civil engineer. If you can analogize that a civil engineer is a doctor who is general practitioner, then a structural engineer would be like a brain surgeon – a specialist.

At the national level, the Structural I is an entry-level examination and is at the same level of our civil, electrical, and mechanical engineering examinations. Thus, this examination is not appropriate for protecting the public health, welfare, and safety because it does not measure the appropriate additional knowledge, skills, and abilities that our state with its densely populated cities and frequent seismic activity demands. The California structural examination is considered a mastery-level examination; it is not an entry-level examination.

As far as the Structural II examination is concerned, we are not sure as to what level that examination is measuring. Because it is a national examination, it has to be a one size fits all examination. Illinois, for instance, allows its entry-level examinees to take the Structural I and II examinations at the same time. Therefore, if the Structural II examination was tailored for California, at a mastery level, we believe Illinois would not be able to use it.

Nonetheless, the Board realizes it needs to pursue other alternatives than just using its own state specific examination. At its next scheduled Board meeting in December, the use of the NCEES Structural II examination along with an eight-hour state specific examination will be discussed.

UPDATE: *At its December 16 and 17, 1999, meeting, the Board voted to transition to using the NCEES Structural II examination in conjunction with an 8-hour state-specific examination by*

the October 2002 examination administration. The Board will continue to encourage NCEES to strengthen the construction of its 8-hour Structural II examination. The Board strongly believes that it is imperative to maintain the high level of public safety (as exhibited by the low number of fatalities in California's recent earthquakes compared to the extremely high number of fatalities in recent earthquakes in other countries) which is provided by the current 16-hour state specific examination.

The NCEES professional land surveying examination is also a one-size-fits-all examination. Again, this is discussed in more detail on Pages 57 through 61 of the 1998 Sunset Report. This national examination is six hours in length, and all states that use it must also administer a state-specific examination. NCEES intentionally leaves out examination questions regarding issues which are handled differently in various jurisdictions. Thus, although the pass rates appear to be in the low- to mid-sixties on the national scale, these are misleading because the state specific examination pass rates probably reduce these to lower numbers.

With regards to the California professional land surveying examination, the Board has been looking into the possible causes of the low pass rates for a few years now. The pass rates in the mid-teens tell us that something is wrong. We believe that the advancement in technology in this area may play a significant role. We also know that California candidates perform more poorly when compared to the national average on the Land Surveyor-in-Training (LSIT) examination. We have been collecting data on the professional land surveying examination candidate population for over five years. The best performing candidates have either a four-year degree in land surveying or civil engineering. For those candidates who qualify to take the examination with experience alone, the pass rate drops dramatically. (Education is not currently a requirement for a professional land surveyor license.) This is what leads us to believe that technology may be playing a big role in the low pass rates. Perhaps the fundamental knowledge and skills that were learned doing things the hard way have gone by the wayside because the computer can do them faster and more accurately. Candidates who have a four-year degree perhaps learn the fundamentals along with the computer skills thus accounting for a higher pass rate. One method to determine the impact of technology will be to survey the practitioners when we perform the next scheduled occupational analysis in 2000. A crucial component of this analysis will be to determine how and what type of technology is used within this field. We may find that a computer has taken the place of a calculator just as the calculator took the place of the slide rule.

We believe it is important that the occupational analysis be completed before any final determinations can be made as to the cause of the low pass rates. It is also important to realize that even if the Board did begin giving the NCEES professional land surveying examination, we would still need to administer a state-specific examination. We will also continue to seek input from candidates, academia, practitioners, and professional societies.

Through the involvement of representatives from California, NCEES has made positive strides towards improving the national professional land surveying examination. The format of the October 1999 LSIT examination changed to an academic basis, and the Board looks forward to seeing the performance statistics of California candidates, which we expect to receive in early February.

UPDATE: *At its December 16 and 17, 1999, meeting, the Board voted to hire a consultant to compare the national examination with the California examination and to make a recommendation whether or not the Board should use the national examination in conjunction*

with a state-specific examination while still maintaining the appropriate level of consumer protection. The consultant study should also look at candidate background (both experience and education) in determining why the pass rate has been so low. The Board hopes to implement the use of NCEES professional land surveying examination in conjunction with a state-specific examination by the April 2001 examination administration.

ISSUE #12. IT IS UNCLEAR WHETHER OCCUPATIONAL ANALYSES HAVE BEEN PERFORMED ON ALL TESTS REQUIRED BY THE BOARD WITHIN THE PAST FIVE YEARS.

12. Please indicate if all examinations provided by the Board have had an occupational analysis performed within the past four years, and if not, by what date the Board expects these analyses to be performed. (Please provide a breakdown of all examinations and when the occupational analyses were performed.)

In 1993, the Board adopted a schedule that provides funding for a new occupational analysis and test plan for each Board-developed examination every five years. Examinations purchased from the National Council of Examiners for Engineering and Surveying (NCEES) have had a longer cycle in the past; however, the Board has requested that this be shortened to five years. Wherever possible, NCEES has complied with this request. The following is the occupational analysis schedule for all examinations administered by the Board.

Board-Developed Examinations	Date of Last Analysis	Scheduled Date of Next Analysis
Geotechnical	1994*	2000
Land surveyor	1995	2000
Special civil	1996*	2001
Structural	1997*	2002
Traffic	1999	2004

* update pending to accommodate the use of the 1997 UBC

NCEES-Developed Examinations	Date of Last Analysis	Scheduled Date of Next Analysis
Engineer-in-training	1993	TBD
Land surveyor-in-training	1998	TBD
Chemical	1989	In Progress
Civil	1996	TBD
Electrical	1989	In Progress
Mechanical	1999	TBD
Agricultural	1989	In Progress
Control systems	1991	TBD
Fire protection	1989	In Progress
Industrial	1989	In Progress
Manufacturing	1999	TBD
Metallurgical	1999	TBD
Nuclear	1995	TBD
Petroleum	1999	TBD

(TBD – date to be determined by NCEES)

ISSUE #13. IT IS UNCLEAR WHY THE BOARD WAS, OR WHETHER IT IS CURRENTLY INVOLVED, IN CONTROVERSIAL POLITICAL CAMPAIGN INITIATIVES THAT DO NOT APPEAR TO RELATE TO CONSUMER PROTECTION OR COMPETENCE OF ENGINEERS.

13. Please indicate why the Board voted to oppose an initiative on the ballot dealing with competitive bidding of engineering contracts, and whether it has taken any other positions or had discussions involving a more recent ballot initiative involving the same issue.

In early 1996, the Board voted to oppose a proposed constitutional amendment. This action was taken following conversations with legal counsel, during which we were advised that opposition to a ballot petition (while still being circulated for signatures and before being approved for an election ballot) was within our prerogative. The Board voted to oppose the proposed amendment because it would have impacted the Board's operations; this proposed amendment would have placed barriers on the Board's ability and responsibility to contract for engineering and land surveying services.

The Board carries out its public health, safety, and welfare mandate by examining engineers and land surveyors and enforcing its laws against the negligent and incompetent licensee. The Board fulfills its mandate, in part, by recruiting and retaining professional engineers and land surveyors as consultants and technical experts for enforcement matters. These individuals must be representative of the engineering and land surveying population in terms of age, gender, geographic location, area of expertise, etc. These persons provide services throughout the year for specific, short-term periods. Any constraint in terms of a delay, while seeking an exemption as would have been required by the proposed constitutional amendment, or requiring the use on only one subset of the licensed population would have seriously impaired our statutory duties. Simply stated, the Board opposed the proposed constitutional amendment because of the likelihood of delays and limitations in the already lengthy state contract process, which would have negatively impacted the operations of the Board.

Once the Board announced and formalized its opposition to the ballot initiative, the sponsor of the initiative challenged the Board's authority to take action on such a measure. Subsequent legal analysis and advice caused the Board to recognize that it had acted outside its authority; thereafter, the Board rescinded its opposition. The Board wrote a public letter announcing this change of position; the letter was sent to all parties who had received the initial letter of opposition, as well as other interested parties.

In recognition of the its lack of authority to take a position on ballot initiatives, the Board has not taken any position on, or had discussions involving, other ballot initiatives.

ISSUE #14. THE BOARD IS PROJECTED TO HAVE A BUDGET DEFICIT BY FISCAL YEAR 2001/02.

14. Please explain what alternatives the Board has considered to deal with its projected budget deficit? Has the Board considered other alternatives such as requiring applicants

for licensure to pay the full costs of the Board in processing applications and providing examinations?

Since November of 1998, the Board has considered five specific options to resolve the projected fund deficit. These options were 1) a spending reduction plan; 2) a restructuring of the Board's fee system to add a non-refundable application processing fee in addition to the examination test fee; 3) a restructuring of the Board's fee system so that the application/examination fee for each of the Board's 18 examinations would be based on the actual costs of the specific examination; 4) an increase in the renewal fee with no increase in application/examination fees; and 5) an increase in the application/examination fees with no increase in the renewal fee.

As part of the spending reduction plan, the Board curtailed expenditures in FY 1998/99 and projected an approximate savings of \$200,000 per fiscal year thereafter. However, the amount of additional revenue needed to avoid a fund deficit is more than the Board could generate through curtailing expenses without jeopardizing its operations.

The Board determined that restructuring its current fee system to add a non-refundable application processing fee in addition to the examination test fee would ultimately cost more to implement than the benefits it would produce. The Board would have to change its entire work process to handle two separate fees, which would increase the Board's on-going expenditures. Furthermore, only 70% of those applying to take an examination would pay the separate application processing fee because 30% of all candidates for each examination cycle are re-examinees whose applications do not need to be evaluated a second time and they would not be paying the application processing fee.

The Board also determined that restructuring its fee system so that each examination would have a separate fee based on the actual costs to develop and administer that examination would not be cost-effective. Some candidates would have to pay an application/examination fee of anywhere from \$1,000 to \$2,000. Additionally, since the examination fees would be based on the costs of developing the examination and those development costs could change every year, the Board's regulations would constantly have to be changed to reflect the correct costs.

The Board decided that increasing only the renewal fee and not the application/examination fees would not be fair to the licensees who would then bear the burden of any increased costs of examination development and administration. The Board also decided that increasing only the application/examination fees and not the renewal fee would not be an equitable method either. Currently, 60% of the Board's revenue is from renewals and 35% from applications. The percentage increase in application/examination fees needed to recover the costs of examination development and administration would be too high if a corresponding increase in renewal fees did not take place at the same time.

However, the Board did decide that a combination of increasing the application fees, increasing the renewal fee, and changing from a quadrennial renewal cycle to a biennial renewal cycle would bring the Board's fund reserve up to a solvent level. At its November 5, 1999, meeting, the Board directed staff to begin preparing proposed legislation to increase the maximum amount that can be charged for the professional-level applications/examinations from \$175 to \$500, to increase the maximum amount that can be charged for the in-training applications/examinations from \$60 to \$130, and to change the renewal period from a quadrennial renewal of \$160 to a biennial renewal of \$160. The Board anticipates that the legislation would become effective in

January 2001 with the accompanying regulatory changes taking effect no later than August 2001. Therefore, the increase in revenue is projected for the last half of fiscal year 2001/2002.

ISSUE #15. SHOULD THE BOARD BE CONTINUED ALONG WITH ITS CURRENT MEMBERSHIP, OR SHOULD THE MEMBERSHIP OF THE BOARD BE CHANGED OR RECONSTITUTED, OR ITS RESPONSIBILITIES TRANSFERRED TO THE DEPARTMENT OF CONSUMER AFFAIRS AND AN ADVISORY COMMITTEE ESTABLISHED?

15. Why should this Board be continued? Summarize what changes have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest. Why couldn't a bureau under the Department of Consumer Affairs, with an advisory committee to the Department, administer this licensing program more effectively and efficiently than the current Board?

STAFF RECOMMENDATION: *No recommendation at this time. However, the Joint Committee and the Department should give serious consideration to either eliminating this Board or reconstituting its membership if the Board will not be able to adequately resolve the issues presented in this background paper.*

The Board strongly believes that the regulation of professional engineers and land surveyors should continue. The deregulation of these professions would result in irreparable harm to the citizens of California. Deregulation of engineers and land surveyors could result in the faulty design of homes, offices, hospitals, and schools. It would certainly result in death and injury during any type of disaster – earthquake, flood, fire, etc. The citizens of California are entitled to protection from negligent and incompetent engineers and land surveyors and the assurance that those individuals who receive a license have demonstrated at least a minimum level of competence before being permitted to practice. Additionally, deregulation would restrict the ability of California's professional engineers and land surveyors to practice in other states based on reciprocity since all other states regulate the practice of engineers and land surveyors. Because of this, competent engineers and land surveyors would be likely to relocate their businesses out of California to states that recognize professional licenses. Another backlash of deregulation would be to inhibit new business from moving to California.

The Board also believes that the regulation of professional engineers and land surveyors is better handled, and therefore the citizens of California better served, by a board rather than a bureau. Engineering and land surveying are highly technical professions. It would be extremely difficult, if not impossible, to regulate these professions within a bureau setting. To have the Department of Consumer Affairs assume the responsibilities of the Board would be detrimental to the citizens of California, not to the extent of deregulation but the consumer would certainly suffer. Because engineering and land surveying are highly technical professions, it would be extremely difficult, if not impossible, to regulate these professions without direct input of professionals. Furthermore, a bureau provides no forum for public input such as is available through board meetings opened to the public. Additionally, centralization of units – such as would occur under a non-board structure – would lead to a breakdown in communication and a loss of information sharing between units. Effectiveness is enhanced by decentralization not further centralization. Centralization creates a larger, less responsive bureaucracy and would significantly increase costs. The Auditor General's May 1991 report, *The Potential Benefits of Further Centralizing*

the Functions of State Entities that Regulate Professions Appear Limited, concluded that “from our review . . . we found that there appear to be limited opportunities for these entities to further realize the potential benefits of centralization, such as decreased costs and increased efficiency in work performance.”

The Board does not believe that the membership should be reconstituted. The Board believes that it is important that its membership represent the various branches of professional engineering and land surveying while still maintaining a public member majority. As was recommended by DCA following the Board’s 1996 Sunset review, the Board’s professional members do represent both the public and private sectors. Board member James W. Foley, Jr., was appointed by Governor Wilson in October 1998. Mr. Foley is a Geotechnical Engineer and has worked for the City of San Jose since 1980; he is currently the manager of the Design and Construction Division for the Department of Public Works. The Governor has the opportunity almost every year to change the membership of the Board, since eleven of the thirteen members are appointed by the Governor for staggered four-year terms.

Some of the changes that have been made to the current regulatory program since its last review to improve its overall effectiveness and efficiency so that it may operate more in the public interest are:

- The Board has expanded its outreach program in which staff and technical experts visit local city, county, and state agencies to assist them with enforcement issues.
- At the Board’s request, the Senate Business and Professions Committee included language in its 1999 omnibus bill to create a retired status for engineers and land surveyors.
- The Board is taking a more active role in NCEES. One of our Board members has been elected vice-president and is slated to become the president within the next two years. This will be the first time a California Board member has been elected president of NCEES since 1963. This Board member is also currently serving on the Board of Directors of NCEES.
- The Board sponsored successful legislation that eliminated three state-specific title act disciplines.
- The Board created a web page that contains the following: a license lookup site; the Board’s laws and rules; board meeting agendas and minutes; the consumer guide; reports of disciplinary action taken by the Board; information on how to file a complaint and complaint forms; the plain language pamphlet; the professional engineers’ application; and our examination schedule and examination statistics.
- The Board has revised its regulations regarding the citation program and the delinquent reinstatement process.

- The Board will be sponsoring legislation this year to accomplish the following:
 1. Provide the Board with the statutory authority needed to adopt, by regulation, a code of professional conduct for professional engineers and professional land surveyors.
 2. Require professional engineers and professional land surveyors to use a written contract when providing their services to consumers.
 3. Move the definitions of electrical engineering and mechanical engineering from regulation and place them in statute.
 4. Change the current four-year renewal cycle to two years and adjust the current renewal and application/examination fees to ensure that the Board's fund maintains the appropriate reserve.
 5. Make "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act.

PART 6.

Board for Professional Engineers and Land Surveyors

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on April 11, 2000 by a Vote of 5 to 0:

ISSUE #1. (CONTINUE REGULATION OF THE PROFESSION?) Should the licensing and regulation of all branches of engineering and land surveying be continued?

Recommendation #1: *Given the health and safety implications for consumers, the Joint Committee and the Department recommends that the practice areas of civil, electrical and mechanical engineering and land surveying should continue to be regulated. However, other areas of engineering should be regulated only if there is clear potential for consumer harm.*

Comments: There is a substantial risk of physical harm to the public from faulty engineering and land surveying work. The need to regulate certain branches of engineering in California is particularly evident because natural disasters such as earthquakes and floods are prevalent.

ISSUE #2. (CONTINUE WITH THE BOARD?) Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department?

Recommendation #2: *The Joint Committee and the Department recommends that the Board's sunset date should be extended for only two years, to July 1, 2003, because of major unresolved issues dealing with the Board's regulatory authority.*

Comments: This is the only board in this round of sunset review to receive a recommendation for a shortened renewal period. Major unresolved issues dealing with the Board's regulatory authority, such as the need to continue regulation of engineering subspecialties and the scope of practice for the three main branches of engineering, indicate that the Board needs additional legislative oversight.

ISSUE #3. (SHOULD THE DEPARTMENT CONDUCT AN INDEPENDENT REVIEW OF TITLE ACT REGULATION?) There is still a need to conduct a more comprehensive analysis of whether certain title acts for specified branches of engineering should be eliminated or converted to practice acts similar to civil, electrical and mechanical engineering, and whether supplemental engineering work should be permitted in other branches of engineering.

Recommendation #3: *The Joint Committee and the Department recommends that the Department should be responsible for reviewing title act registration. There should be a Board-funded contract with an independent consulting firm to perform an objective analysis of title act registration. Additionally, the analysis should consider the extent to which supplemental engineering work should be permitted for all branches of engineering.*

Comments: Various attempts by the Board and the Legislature to review the need for regulation of engineering subspecialties have not been successful. The initial sunset review of the Board recommended that it conduct a thorough analysis of the title act system. This resulted in the elimination of only three out of thirteen title acts (corrosion, quality, and safety). Attempts at eliminating regulation of traffic engineers failed due in part to the Legislature's acceptance of the argument that deregulation could endanger highway safety.

Both the Joint Committee and the Department have consistently recommended that the Board conduct a more thorough analysis of the remaining title acts that potentially could be eliminated and *clearly demonstrate why a title act should be continued*. However, the Board has not fully responded to this recommendation and failed to consider some of the recommended criteria for evaluating the ten remaining title act disciplines. Because of the controversy over deregulation, the Department anticipates that the remaining title acts will stand for the next two years. In the interim, the Department has recommended that it be responsible for reviewing title act registration.

Another issue unresolved, is the extent to which supplemental engineering work should be permitted for all branches of engineering. Standard industry practices allow for overlapping engineering work on any given project. However, the Board only allows civil engineers to perform overlapping or supplemental work from other branches of engineering. Specifically, existing law allows civil engineers to perform supplemental work provided that the work is incidental to or in conjunction with civil engineering work. There is no similar law for other branches of engineering. The result is inequitable treatment of other branches of engineering and inconsistent interpretations of overlap of scope of practice between similar or related engineering disciplines.

[The Board agrees to hire a consultant to perform an in-depth analysis of the title acts, specifically focusing on which ones should be deregulated and which ones should become practice acts. The Board continues to believe strongly that the current method of only restricting title but not the practice does little, if anything, to protect the citizens of California.]

ISSUE #4. (SPECIFICALLY DEFINE ELECTRICAL AND MECHANICAL ENGINEERING IN STATUTE?) The ability of the Board to define the scope of practice for areas of electrical and mechanical engineering is unique and has possibly created more controversy for the Board than any other regulatory power it has. Only the Legislature generally has authority to delineate scope of practice for licensed professions.

Recommendation #4: *To eliminate confusion over the scope of practice for the two main branches of electrical and mechanical engineering, the Joint Committee and the Department recommends that the regulatory definitions of electrical and mechanical engineering should be established in statute.*

Comments: Generally, a specific scope of practice for regulated professions is delineated in statute. However, this Board's statutory definitions for electrical and mechanical engineering are very general and problematic. Specific definitions should be included in statute.

[The Board recently agreed to sponsor legislation to move the definitions of electrical and mechanical engineering from regulation into statute, as recommended by the Joint Committee and the Department. They also scheduled public hearings to review the current definitions.]

ISSUE #5. (SHOULD THE BOARD ADOPT A CODE OF PROFESSIONAL CONDUCT?) This Board has not, as yet, adopted a code of professional conduct for the engineering profession. There has been criticism of the Board for not pursuing these professional standards for the practice of engineering. There are currently a number of states that have adopted professional standards of practice for engineers, and the National Council of Examiners and Engineers and Surveyors (NCEES) has recommended adoption of model standards. All other design and construction boards under the Department also utilize a code of professional conduct.

Recommendation #5: *The Joint Committee and the Department recommends that the Board should seek statutory authority to adopt a professional code of conduct and ethics for the practice of engineering.*

Comments: Almost all the boards under the Department, particularly those governing the design and construction industries, utilize a code of professional conduct as a basis for disciplining licensees. However, this Board has not adopted a code of professional conduct. Codes of professional conduct allow licensing boards to take disciplinary action against their licensees for fraud, deceit, misrepresentation, negligence, incompetence, breach of contract, and aiding/abetting another to violate the law. Specifically, this authority has proven to be an effective tool against false advertising and illegal contracting practices. Therefore, the Department concurs with the Joint Committee recommendation that the Board should seek statutory authority to adopt a code of professional conduct.

[The Board recently indicated that it has introduced legislation to adopt a code of professional conduct.]

ISSUE #6. (SHOULD THE BOARD CEASE PROMULGATING “POLICY RESOLUTIONS?”) The Board practice of issuing policy resolutions as a method of clarifying existing statutes, regulations, and procedures appears to be legally indefensible. Specifically, these policy resolutions have been considered as “underground” regulations. The Attorney General has advised, that if a board needs to clarify any part of applicable law, it should do so only through regulations.

Recommendation #6: *The Joint Committee and the Department recommends that all policy resolutions or other proposals by the Board relating to any aspect of its licensing authority should be codified either as regulations or statutes. This will ensure the Board is not exceeding its authority and bring it into conformity with the practices of other boards.*

Comments: The Board practice of issuing policy resolutions as a method of clarifying existing statutes, regulations, and procedures appears to be a violation of law. A 1996 California State Supreme Court decision limits agencies from issuing opinions or procedures without adopting them as regulations. Specifically, these policy resolutions are considered “underground” regulations (regulations adopted without the benefit of the rulemaking process and public comment required by the Administrative Procedures Act). In response, the Board withdrew some of its policy resolutions but several remain in question. As the Joint Committee has noted, it is not clear whether the Board still plans to use policy resolutions to interpret its authorizing statutes and provide opinions concerning areas of practice. However, given a May 1999 Attorney General opinion strongly suggesting that the Board curtail the use of policy resolutions, it is clear that the Board should cease this practice.

[The Board recently indicated that it voted to withdraw all remaining policy resolutions, and that most could be addressed through the regulatory process should the Board determine that the specific issue still needs to be addressed.]

ISSUE #7. (SHOULD THERE BE A WRITTEN CONTRACT REQUIREMENT FOR ENGINEERING SERVICES?) Unlike other design and building trades regulated by the Department, such as architects, home improvement contractors, and landscape architects, there is no written contract requirement for licensed engineers. [The Board recently introduced legislation to adopt a written contract requirement.]

Recommendation #7: *The Joint Committee and the Department supports the Board’s efforts to pursue legislation to adopt a written contract requirement for engineers.*

Comments: Engineering is one of a very few professions that does not require written contracts for the performance of services. Written contracts are an effective legal tool for protecting all parties in complex transactions of a technical nature. All other design and building professionals regulated by the Department, such as architects, home improvement contractors, and landscape architects, have written contract requirements. Written contracts would enhance protection of consumers of engineering services by ensuring fair contracting and billing practices. They also protect engineers by ensuring that both parties understand the essential terms of a professional contract, and by enabling them to enforce an engineer’s lien when necessary. Accordingly, the Department supports the Board’s efforts to pursue legislation to adopt a written contract requirement for engineers.

ISSUE #8 (ARE THERE CHANGES NECESSARY TO UPDATE THE BOARD'S LICENSING ACT?) Although the Board was unable to generate support for its legislation to rewrite the entire Professional Engineers' Act, there may still be some changes which should be made to either clarify or update this licensing act, and that are non-controversial. (The Board recently indicated that it has introduced legislation to make "clean-up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act.)

Recommendation #8: *The Joint Committee recommends that the Board should pursue legislation to make "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors' Act which are non-controversial..*

Comments: In 1997, the Board introduced legislation to rewrite its entire Professional Engineers' Act. The Board, however, was unable to generate any significant support from either the Legislature or the Administration for its proposal. One of the reasons given for the failure of this measure was a lack of understanding and confusion about what the Board was trying to accomplish by rewriting the entire Professional Engineers Act. The measure was seen as too limiting and restrictive on the current practice of engineering in this State. Although the Board claimed that this new licensing scheme would have cleared up the confusion and problems with the current Engineer's Act, insufficient evidence was provided to demonstrate that this would be accomplished. There were, however, changes being made to the Act which were non-controversial and both clarified and updated provisions within the Act. Since the Board dropped the entire proposal, these non-controversial changes have not been pursued.

[The Board has indicated that it will be pursuing legislation to make a number of "clean up" amendments to the Professional Engineers Act and the Professional Land Surveyors Act.]

ISSUE #9. (SHOULD THE BOARD ELIMINATE CERTAIN STATE-ONLY EXAMS?) It appears as if the Board may be able to provide national examinations for those who wish to practice structural engineering or land surveying, rather than requiring the current state-only examinations. This would improve state reciprocity for engineers who practice in these areas.

Recommendation #9: *The Joint Committee recommends that a sunset date of December 31, 2004 should be placed on these two state-only examinations allowing the Board sufficient opportunity to transition to using the national examinations. Any state-specific examinations in structural engineering or land surveying should only pertain to the laws, regulations and practice which is unique to California, they should not duplicate areas of testing provided for in the national examinations.*

Comments: During the review of this Board in 1996, the Joint Committee questioned whether the Board still needed to provide two state-only examinations. They included the "Structural Engineers" examination and the "Land Surveyors" examination.

California Structural Engineering Examination. For a civil engineer to use the title "structural" engineer, they must pass the state Structural (Civil) examination. NCEES also provides a national examination for structural engineers. The Joint Committee questioned why the national

exam, which would provide for better comity for out-of-state structural engineers, could not be used.

[The Board has reviewed this issue and recently voted to transition to using the NCEES Structural II national examination in conjunction with an 8-hour state-specific examination.]

California Professional Land Surveyors Examination. The Board administers its own examination to land surveyor candidates. Recently the pass rates on this exam have plummeted to 15% in 1993, 8% in 1995, 1.9% in 1998, and 14.4% in 1999. The NCEES also provides a national examination for land surveyor candidates. In 1998, the pass rate for the national examination was 67.2%. The Joint Committee questioned once again why the national exam could not be used, which would provide for better comity for out-of-state land surveyors and at least improve the pass rate for land surveyor candidates. Also, 52 member boards of the NCEES use the national land surveying examination.

[The Board has reviewed this issue and recently voted to hire a consultant to compare the national examination with the California examination and to make a recommendation whether or not the Board should use the national examination in conjunction with a state-specific examination while maintaining the appropriate level of consumer protection. The Board hopes to implement the use of the NCEES professional land surveying examination in conjunction with a state-specific examination by the April 2001 examination administration.]

ISSUE #10. (NEED FOR OCCUPATIONAL ANALYSES OF BOARD'S EXAMS?)

Not all examinations provided by the Board have had an occupational analyses performed on them within the past five years as recommended by the Department.

Recommendation #10: The Joint Committee recommends that the Board should assure that all state and national examinations provided by the Board have had an occupational analysis performed on them within the past five years. If they have not, then the Board should immediately implement a schedule for performing a new occupational analysis to meet current legal requirements.

Comments: Occupational analyses and exam validations are critical components of appropriate and legally defensible licensure programs. Both types of reviews help the state ensure that the standards for entry into professions are consistent with the skills required in those professions. A recent court decision held that in order to protect the civil rights of applicants for professional licensure, examinations used to assess competence must meet the test of "job-relatedness." The court also indicated, that if a licensing examination has not been updated and validated within five years it may not be legally defensible. The Department has also adopted recent policy guidelines so that boards may implement minimum standards requirements for updating and validating their licensing examinations. It was unknown at the time of the November hearing, whether all of the examinations provided by the Board are meeting this requirement. And if not, what plans the Board has to update their examinations with an occupational analysis. [The Board has provided a schedule for occupational analysis and test plan update of all examinations provided by both the Board and NCEES. It appears as if all examination will meet the five-year standard.]

ISSUE #11. (SHOULD THE BOARD SEEK A FEE INCREASE?) The Board is projected to have a budget deficit by fiscal year 2001/02. Should application, examination and licensee fees be increased to deal with the Board's projected budget deficit?

Recommendation #11: *The Joint Committee recommends that the Board should provide appropriate justification for any fee increases to the Department and the Legislature, and assure that the Board has considered all other alternatives to deal with its projected budget deficit. If considered appropriate, then any changes to the fee structure, or increases in fees, should be included in sunset legislation.*

Comments: As indicated by the Board, it has considered a number of options to resolve its projected fund deficit. As part of a spending reduction plan, the Board curtailed expenditures in fiscal year 1998/99 and projected an approximate savings of \$200,000 per fiscal year thereafter. The Board is now proposing to restructure its fee system, increase both renewal and application/examination fees and change from a quadrennial renewal cycle to a biennial renewal cycle (similar to other boards). These changes should bring the Board's fund reserve up to a solvent level.

ISSUE #12. (CHANGE COMPOSITION OR REQUIREMENTS FOR MEMBERSHIP ON THE BOARD?) There has been some concern raised that the current professional membership of the board does not adequately represent the engineering profession. That in the past there has been little representation of engineers who work in the public sector.

Recommendation #12: *The Joint Committee recommends that one of the licensed professional engineers of the Board be from a local public agency and another from a state agency.*

Comments: There are total of 13-members for this Board. There are 7 public members and 6 professional members. The professional members include five licensed professional engineers and one licensed land surveyor. Of the five licensed professional engineers, one must be civil engineer, one an electrical engineer, one a mechanical engineer, one a structural engineer, and one from one of the remaining branches of engineering. Over the years, there has been criticism that the Board has been dominated by those professional engineers who work in the private sector and generally work for engineering firms, and that there was little if any representation for a large number of licensed engineers who work for local or state agencies.